

CARDINAL RULES
OF
LEGAL INTERPRETATION.

COLLECTED AND ARRANGED

BY

EDWARD BEAL, B.A.

LATE SCHOLAR OF TRINITY HALL, CAMBRIDGE,
OF THE MIDDLE TEMPLE AND THE SOUTH EASTERN CIRCUIT,
BARRISTER-AT-LAW.

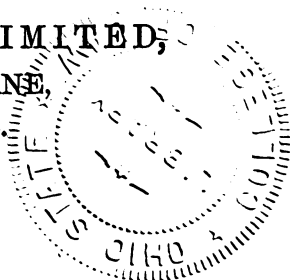
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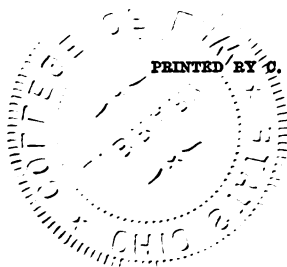


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PREFACE.

I KNOW of no attempt having been made to collect and arrange in one volume the Cardinal Rules of the legal interpretation of *all* instruments. Scattered as such rules are in reports and statutes, they are inaccessible to most persons. It is in the hope that this collection and arrangement may be of service to members of the legal profession, students of law and lay persons, whether at home or in the colonies, whose business it is to be conversant with the canons and principles of legal interpretation, that I have ventured to print this book. I trust that the legal profession will deem this, my endeavour to reduce legal interpretation to an art, not unworthy to take a place, as a helpmeet, beside the well-known elaborate and excellent treatises on the interpretation of deeds, statutes, and wills.

As authority, I give the reported words of the Court or Judge, without burdening the work with the facts of the particular cases in which the rules were laid down. I deem it better, and more useful, to give the very words of the Court or Judge, as

reported, than to attempt to paraphrase such important language.

The rules printed in italics are not intended to be exhaustive, but are merely introductory to the quotations that follow. When dealing with rules relating to any particular subject, I quote from decisions on that subject only. The plan of the book has necessitated a certain amount of repetition, which, however, conduces to clearness, and may, I hope, be regarded with indulgence.

Cases referred to are in their chronological order, and have their dates given. Where two references are given, the quotation is from the first-mentioned report.

The Interpretation Act, 1889, and also the now repealed Act, commonly known as Lord Brougham's Act, 1850, are printed—the latter in italics—for reference in the Appendix.

My best thanks are due to my friend Mr. JAMES WEIR, M.A., of Lincoln's Inn, for his careful revision of the proof sheets and for valuable suggestions while the book was passing through the press.

E. B.

5, PAPER BUILDINGS,
TEMPLE,
July, 1896.

TABLE OF CONTENTS.

	PAGE
TABLE OF CASES REFERRED TO	xix
TABLE OF STATUTES CITED	xli

Part I.—CASE LAW.

SECTION I.

AUTHORITIES.

Text Books of Living Authors	1
Reports—	
“The Times”	2
“The Times Law Reports”	2
“ Weekly Notes ”	3
Public Records, Reporters, and Ancient Authors	3
Some old Reports—	
Barnardiston	5
Blackstone	5
Coke	5
Keble	5
Leonard	6
Modern Cases	6
Plowden	6
Vernon	6
Judgments	6

SECTION II.

DECISIONS.

	PAGE
Reason and Spirit of Decisions	7
Use of Decisions	7
When useful	8
Principles of Decisions	9
Rules of Law against Principle	10
Consistent Decisions—Contradictory Decisions	10
Long-standing Decisions	10
Dicta contained in Decisions	15
Decisions on Identical Words or Similar Grounds	17
Decisions and Judgments affirmed on Different Grounds	18

SECTION III.

DECISIONS OF COURTS.

Decisions of Courts of Co-ordinate or Concurrent Jurisdiction ..	19
Lord Chancellor's Court	21
House of Lords—	
Independent Reasons of Lords	22
Irreconcilable Cases of House of Lords	24
Privy Council	25
Ecclesiastical Courts	26
Railway Commissioners	27
Irish Courts	27
Scotch Courts	27
American Courts	29

Part II.—RULES OF LEGAL INTERPRETATION APPLICABLE TO ALL INSTRUMENTS.

SECTION I.

INTRODUCTORY CAUTIONS.

Maxims	30
Stereotyped Rules	30

SECTION II.

RULES APPLICABLE TO ALL INSTRUMENTS.

	PAGE
Duties of Court and Jury	31
Sense and Meaning, how collected	31
General Words	32
Particular Words	34
Insensible Words and Phrases	34
Circumstances and Object	35
Lord Wensleydale's Golden Rule	37
Context— <i>Noscitur a Sociis</i>	39
Capricious Intention	39
Date	40
Time, Computation of	40

Part III.—CONTRACTS.

SECTION I.

RULES APPLICABLE TO ALL CONTRACTS.

Contract defined	42
Evidence of Contract	43

SECTION II.

LAWS GOVERNING CONTRACTS.

Where made—Place of Fulfilment	44
Application of <i>Lex Fori</i>	47
Foreign Documents—	
Translation	48
Foreign Stamp Laws	50

SECTION III.

	PAGE
Legal and Equitable Construction	51
Time, Essence of Contract	53
Greenwich Mean Time	53
Original Draft	54
Two Instruments	54
Court and Jury—Duties of	55
Intention—From Context, from Words used ..	57
Subsequent Acts of Parties	58
Subsequent Declarations of Parties	58
Altered Circumstances	59
Implied Promise	59
Golden Rule (Bramwell, B.'s)	59
Latent Ambiguity	60
Patent Ambiguity	60

Part IV.—DEEDS.

Presumption respecting the Making of Deeds	63
Construction should be favourable—most agreeable to the	
Intention	64
Date and Delivery	66
Time	67
Punctuation and Brackets	67
Intention of Parties	67
Inconsistent Parts of Deed	67
Deed Operating Two Ways	69
Words, how construed	69
General and Special Words	70
Exceptions	72
Operative Part and Recitals	73
Covenants—	
Definition of	76
Express or Implied	78
Construed against Covenantor	79
Dependent and Independent	82
Conditions Precedent	84
Restrictive	85
Real and Personal	85
Joint and Several	86
For Another	88

TABLE OF CONTENTS.

xi

	PAGE
Repugnancy	88
Legal and Illegal Parts	89
Matters referred to	90
Erroneous Additions	90
Alterations	90
Releases	91
Argument of Inconvenience	92
<i>Contemporanea Expositio</i>	92

Part V.—MERCANTILE DOCUMENTS.

Generally	93
Bill of Lading	94
Charterparty	94
Writing and print	95
Policy of Insurance	95
Warranty in a Policy	96
Rules for ascertaining amount of a loss under a Policy	96

Part VI.—MISCELLANEOUS INSTRUMENTS.

Patents	97
Specification	97
Pleadings	102
Defined	102
Pleading over	102
How Construed	102
Powers	104
Intention	104
Naked Powers	104

Part VII.—STATUTES.

SECTION I.

	PAGE
Statute defined	106
Canons and Rules of Construction	106
Statutes <i>primâ facie</i> Territorial	107
Statutes affecting Colonies	110

SECTION II.

Citing Statutes	112
Title of a Statute	114
Date and Commencement	115
Preamble—	
Defined	118
Enacting Part and Preamble	118
Recitals	122
Headings	122
Marginal Notes	124
Punctuation and Brackets	125
Sections	125
Proviso	126
Saving Clause	126
Schedules	126

SECTION III.

DIFFICULTIES OF CONSTRUCTION	127
--------------------------------------	-----

SECTION IV.

THINGS TO BE CONSIDERED IN INTERPRETATION.

All Parts together	129
Common Law; Mischief and Remedy	129
Intention	130
Subject-matter	131
Objects	131
Surrounding Circumstances—State of Law	132
Policy	133
History	133
Report of Commissioners	134
Debate in Parliament	134

SECTION V.

	PAGE
The Crown	135
General Statutory Interpretation	137
Interpretation Clauses	140
The Golden Rule	140
Dictionary Meaning	145
Context	145
General Words and Expressions	146
<i>Ejusdem generis</i> Doctrine	146
Same Word in Different parts of a Statute	148
Different Words in same Statute	148
Phrases in Statutes <i>in pari materia</i>	149
Words not relating to any Art or Science	149
Technical Language	149
Legal Sense	150
Superfluous Words	150
Mistakes	150
<i>Casus Omissus</i>	151
Insensible Phrase	151
Extraordinary Results	152
Operating unreasonably or absurdly	152
Permissive, Directory or Enabling Statutes	153
Optional Statutes	154
Imperative or Permissive Phrases	154
Obligatory or Directory	156
Restriction	156
Extension	157
Implied Words	158

SECTION VI.

Effect on Common Law	158
Effect on Customs	159
Effect on pre-existing Rights	159
Effect on Contracts	160
Equitable Construction	160
Rational and Beneficial Construction	161
Argument from Inconvenience	161
Injury to Third Parties	162
Construction producing Injustice	162
Time	164
Several Statutes to be construed as One	165

	PAGE
Statutes <i>in pari materia</i>	165
Consolidation of Statutes	167
Amending Statute	168
Codification	168
<i>Contemporanea Expositio</i>	169
Decisions on Statutes	170
Practice	174

SECTION VII.

Judicial and other Notice of Statutes	175
Notice of Clauses to Private Persons	176
General and Special Provisions	176
General Incorporating Clauses	177
Public and Private Statutes	178
Local and Personal Statutes	180
Lord Shaftesbury's Clauses	180
Intention unconnected with Purposes of Act	181
Statutes conferring Powers on Public Bodies or Companies	181
Convenience and Inconvenience	183
Rights accompanying Powers	184
Powers causing a Nuisance	184
<i>Ultra Vires</i>	184
Statutes in reference to Trade	185
Statutes interfering with Private Property, Rights and Interests	186
Statutes striking at Privileges	188
Statutes imposing charge on an Individual	189
Statutes in reference to Judicial Acts	189

SECTION VIII.

Retrospective and Prospective Statutes	191
Declaratory Statutes	196
Statutory Fictions	196
Contradictory Statutes	196
Inconsistent Statutes	197
Remedial Statutes	197
New Right and its Remedy	198
New Offence and its Remedy	199
Prohibitory Statutes	199
Explanatory Statutes	200

TABLE OF CONTENTS.

XV

	PAGE
Mandatory Statutes	200
Fiscal, Taxing and Charging Statutes.. .. .	201
Penal Statutes	203
Mode of enforcing Statutes	205
Cumulative Statutes—	
Accumulative Penalties	206
Accumulative Damages,, .. .	206
Same Offence with different Punishments,, .. .	207
Avoiding Statutes	208

SECTION IX.

Expiring and Continuing Statutes	208
Repeal of Statutes in same Session	209
Effect of Repeal	210
Prior Special and Subsequent General Statute	214
Prior General and Subsequent Special Statute	219
Repeal by Implication	220
Repeal saved by Incorporation	221
Repeal of Modifying Sections	221
Repeal by Private Statute	222
Repeal and Re-enactment	223

Part VIII.—WILLS.

SECTION I.

Testator <i>Inops Consilii</i>	224
Illiterate Testator	224
Artificial Rules	225
Testator's Domicil	225
<i>Mobilia Sequuntur Personam</i>	225
Will containing Foreign Terms	228

SECTION II.

FORMS OF WILLS.

	PAGE
No Technical Form necessary	230
Original Will may be looked at	230
Blanks—A Golden Rule	230
Date of Wills	231
Punctuation of Wills	232

SECTION III.

CASES ON WILLS	232
------------------------	-----

SECTION IV.

INTENTION.

Discovery of Testator's Intention.. .. .	233
Golden Rule	236
Circumstances	237
Spirit and Letter	240
General and Special Intents	241

SECTION V.

Meaning derived from the Will itself.. .. .	243
Vocabulary of Ordinary Life	245
Technical Words and Expressions	246
Words capable of a Two-fold Construction	249
Same Words in different Parts	249
Transposing Words	250
Inconsistency	250
Rejecting Words	250
Superfluous Words.. .. .	251
Omission supplied	252
Caprice	252
Misdescription	253
Ambiguities	254
Latent or Patent	254
Latent	255
Patent	255

TABLE OF CONTENTS.

xvii

SECTION VI.

	PAGE
SUBSEQUENT ACTS	256

SECTION VII.

Disinheriting	257
Devises	258
General	258
Want or Failure of Issue	259
Devise to Trustee or Executor	259
Estate Tail	260
Children or Issue Dying in Testator's Lifetime.. .. .	260
Connection of Independent Devises	260
Residuary Devise	261
Revocation	261
Revival	261

SECTION VIII.

CONDITIONS PRECEDENT AND SUBSEQUENT ..	262
--	-----

APPENDIX	263
Interpretation Act, 1889 (52 & 53 Vict. c. 63)	263
Lord Brougham's Act, 1850 (13 & 14 Vict. c. 21) ..	279

INDEX	281
---------------	-----

TABLE OF CASES REFERRED TO.

A.

	PAGE
ABBOTT <i>v.</i> Middleton (1858), 7 H. L. Cas. 68; 28 L. J. Ch. 110- 82, 236, 252	
Abley <i>v.</i> Dale (1851), 11 C. B. 378; 20 L. J. C. P. 233 - 141, 152, 162	
Acherley <i>v.</i> Vernon (1739), Willes, 153 - - - - - 262	
Adie <i>v.</i> Clark (1876), 3 Ch. D. 134 - - - - - 100	
Alderson <i>v.</i> Maddison (1880), 5 Ex. D. 293; 49 L. J. Ex. 801 - - 43	
Aldous <i>v.</i> Cornwell (1868), L. R. 3 Q. B. 573; 37 L. J. Q. B. 201 - 91	
Alexander <i>v.</i> Vanderzee (1872), L. R. 7 C. P. 530 - , - - - 56	
Allgood <i>v.</i> Blake (1873), L. R. 8 Ex. 160; 42 L. J. Ex. 101 - 128, 239	
Allhusen <i>v.</i> Brooking (1884), 26 Ch. D. 559; 53 L. J. Ch. 520 - - 193	
Alliance Bank of Simla <i>v.</i> Carey (1880), 5 C. P. D. 429; 49 L. J. C. P. 781 - - - - - 48	
Alsager <i>v.</i> St. Katherine Docks Co. (1845), 14 M. & W. 794; 15 L. J. Ex. 34 - - - - - 95	
Altrincham Un. Asst. Com. <i>v.</i> Cheshire Lines Com. (1885), 15 Q. B. D. 597 - - - - - 179	
Alves <i>v.</i> Hodgson (1797), 7 T. R. 241 - - - - - 51	
Amalia, The (1863), 32 L. J. Ad. 191 - - - - - 108	
Anderson <i>v.</i> Anderson, [1895] 1 Q. B. 749; 64 L. J. Q. B. 457- 33, 34, 72, 245	
Appleton <i>v.</i> Binks (1804), 5 East, 148 - - - - - 88	
Ashbury Railway Carriage and Iron Co. <i>v.</i> Riche (1875), L. R. 7 H. L. 653 - - - - - 185	
Ashworth <i>v.</i> Munn (1880), 15 Ch. D. 363 - - - - - 21	
Aspden <i>v.</i> Seddon (1875), L. R. 10 Ch. 394; 44 L. J. Ch. 359 - - 18	
Aspden <i>v.</i> Austin (1844), 5 Q. B. 671; 13 L. J. Q. B. 155 - - 78	
Atcheson <i>v.</i> Everitt (1776), Cowp. 382 - - - - - 198	
Atkinson <i>v.</i> Hutchinson (1734), 3 P. Wms. 258 - - - - - 249	
Att.-Gen. <i>v.</i> Campbell (1872), L. R. 5 H. L. 524; 41 L. J. Ch. 611 - 112	
— <i>v.</i> Cast-Plate Glass Co. (1787), 1 Anstr. 39 - - - - 60	
— <i>v.</i> Chelsea Water Works Co. (1731), Fitzgibbon, 195...116, 196, 209	
— <i>v.</i> Donaldson (1842), 10 M. & W. 117 - - - - - 136	
— <i>v.</i> Drummond (1842), 1 Dr. & War. 353 - - - - - 70, 92	
— <i>v.</i> Great Eastern Ry. Co. (1879), 11 Ch. D. 449 - - - 125	
— <i>v.</i> — (1880), 5 App. Cas. 473 - - - - - 185	
— <i>v.</i> — (1872), L. R. 7 Ch. 475; (1873), L. R. 6 H. L. 367; 41 L. J. Ch. 505 - - - 177, 220	

	PAGE
Att.-Gen. <i>v.</i> Hertford (1849), 3 Ex. 670; 18 L. J. Ex. 332	- 196
— <i>v.</i> Lamplough (1878), 3 Ex. D. 214; 47 L. J. Ex. 555	- 213
— <i>v.</i> Lockwood (1842), 9 M. & W. 378	- 141, 207
— <i>v.</i> Panter (1772), 6 Bro. P. C. 553	- 116
— <i>v.</i> Parker (1747), 3 Atk. 576	- 92
— <i>v.</i> Powis (Earl of) (1853), Kay, 186	- 35, 132
— <i>v.</i> Theobald (1890), 24 Q. B. D. 557	- 196
— <i>v.</i> Windsor (Dean and Canons) (1860), 8 H. L. Cas. 369;	
30 L. J. Ch. 529	- 23
Attwater, Ex parte (1876), 5 Ch. D. 27; 46 L. J. Bk. 41	- 216
Avery's Patent, In re (1887), 36 Ch. D. 307; 56 L. J. Ch. 586	- 172
Avery <i>v.</i> Wood, [1891] 3 Ch. 115; 61 L. J. Ch. 75	- 174

B.

Baddeley <i>v.</i> Leppingwell (1764), 3 Burr. 1533	- 234
Bagshaw <i>v.</i> Spencer (1743), 2 Atk. 570	- 246
Bailey <i>v.</i> Lloyd (1829), 5 Russ. 330	- 73
Bain <i>v.</i> Cooper (1842), 9 M. & W. 701; 11 L. J. Ex. 325	- 70
Baines, In re (1840), 1 Cr. & Ph. 31	- 127
Baird Trustees <i>v.</i> Inland Revenue (1888), 25 Scott. Law Rep. 533;	
15 Ct. Sess. Cas. 682	- 144
Bank of England <i>v.</i> Vagliano Brothers, [1891] A. C. 107; 60 L. J.	
Q. B. 145	- 168
Bank of India <i>v.</i> Wilson (1877), 3 Ex. Div. 108; 47 L. J. Ex. 153	- 131
Barker <i>v.</i> Giles (1725), 2 P. Wms. 279	- 234
— <i>v.</i> Hodgson (1814), 3 M. & S. 267	- 94
— <i>v.</i> Palmer (1881), 8 Q. B. D. 9; 51 L. J. Q. B. 110	- 156
Barlow <i>v.</i> Ross (1890), 24 Q. B. D. 381; 59 L. J. Q. B. 183	- 158
— <i>v.</i> Teal (1885), 15 Q. B. D. 403; 54 L. J. Q. B. 400	- 174
Barratt <i>v.</i> Wyatt (1862), 30 Beav. 442	- 74
Barrington's Case (Sir F.) (1611), 4 Coke, p. 416, Part VIII. 138 a...	159, 179
Barrow <i>v.</i> Wadkin (No. 2) (1857), 24 Beav. 327; 27 L. J. Ch. 129	- 125
Barter <i>v.</i> Dubeux (1881), 7 Q. B. D. 413; 50 L. J. Q. B. 527	- 3
Barton <i>v.</i> Fitzgerald (1812), 15 East 530	- 68, 81
Bateson <i>v.</i> Gosling (1871), L. R. 7 O. P. 9	- 89
Bathurst <i>v.</i> Errington (1877), 2 App. Cas. 698; 46 L. J. Ch. 748	- 240,
	253
Baumvoll Manufaktur Von Scheibler <i>v.</i> Gilchrest, [1891] 2 Q. B.	
310; 60 L. J. Q. B. 605	- 95
Beamish <i>v.</i> Beamish (1861), 9 H. L. Cas. 274	- 24
Beckford <i>v.</i> Crutwell (1832), 1 Moo. & Rob. 187	- 55
— <i>v.</i> Wade (1805), 17 Ves. 87	- 147
Bedson's Trusts, In re (1885), 28 Ch. D. 523; 54 L. J. Ch. 644	- 225
Bentley <i>v.</i> Rotherham and Kimberworth Local Board of Health (1876),	
4 Ch. D. 588; 46 L. J. Ch. 284	- 39, 122, 145
Beresford-Hope <i>v.</i> Lady Sandhurst (1889), 23 Q. B. D. 79; 58 L. J.	
Q. B. 316	- 170
Berkeley's (Earl of) Will, In re (1874), L. R. 10 Ch. 56	- 131

TABLE OF CASES REFERRED TO.

xxi

	PAGE
Bethlem Hospital, <i>In re</i> (1875), L. R. 19 Eq. 457; 44 L. J. Ch. 406 -	11, 131, 172
Bettini <i>v.</i> Gye (1876), 1 Q. B. D. 183; 45 L. J. Q. B. 209 -	84
Biffin <i>v.</i> Yorke (1843), 6 Scott, N. R. 222; 12 L. J. C. P. 162 -	152
Birkenhead Docks (Trustees) <i>v.</i> Laird (1853), 18 Jur. 883; 4 D. M. & G. 732; 23 L. J. Ch. 457 -	182, 214, 222
Birks <i>v.</i> Allison (1862), 13 C. B. N. S. 12; 32 L. J. C. P. 51 -	162
Blackwood <i>v.</i> The Queen (1882), 8 App. Cas. 82; 52 L. J. P. C. 10 -	146
Blaiberg, <i>Ex parte</i> (1883), 23 Ch. D. 254; 52 L. J. Ch. 461 -	173
Blain, <i>Ex parte</i> (1879), 12 Ch. D. 522 -	108, 110
Blakemore <i>v.</i> The Glamorganshire Canal Co. (1824), 1 M. & K. 154; 2 L. J. Ch. 95 -	181
Blamford <i>v.</i> Blamford (1615), 3 Buls. 103 -	234
Boon <i>v.</i> Howard (1874), L. R. 9 C. P. 277; 43 L. J. C. P. 115 -	153
Boone <i>v.</i> Eyre (1777), 1 H. Bl. 273, n.; 2 W. Bl. 1312 -	82, 83
Booth <i>v.</i> Ibbotson (1827), 1 Y. & J. 354 -	170
Bootle <i>v.</i> Blundell (1815), 1 Mer. 193 -	235
Bos <i>v.</i> Helsham (1866), L. R. 2 Ex. 72; 36 L. J. Ex. 20 -	13, 14
Bottomley's Case (1880), 16 Ch. D. 681; 50 L. J. Ch. 167 -	92
Bourne <i>v.</i> Gatliff (1844), 11 Cl. & F. 45 -	56
Bowes <i>v.</i> Shand (1877), 2 App. Cas. 455; 46 L. J. Q. B. 561 -	56
Bowring <i>v.</i> Elmslie (1790), 7 T. R. 216, note (a) -	72
Boycot <i>v.</i> Cotton (1738), 1 Atk. 552 -	6
Bradburne <i>v.</i> Botfield (1845), 14 M. & W. 559; 14 L. J. Ex. 330 -	87
Bradford <i>v.</i> Young (1884), 26 Ch. D. 656; 54 L. J. Ch. 96 -	228
— <i>v.</i> — (1885), 29 Ch. D. 617 -	229
Bradley (In the Goods of) (1883), 8 P. D. 215; 52 L. J. P. 101 -	252
Brain <i>v.</i> Thomas (1881), 50 L. J. Q. B. 662 -	199
Branley <i>v.</i> South Eastern Ry. Co. (1862), 12 C. B. N. S. 63; 31 L. J. C. P. 286 -	44
Brassey <i>v.</i> Chalmers (1852), 16 Beav. 223 -	105
Brewster <i>v.</i> Kitchell (1698), Salk. 198 -	160
Brighton (Guardians of Parish of) <i>v.</i> Guardians of Strand Union, [1891] 2 Q. B. 156; 60 L. J. M. C. 105 -	149
Bristow <i>v.</i> Secqueville (1850), 5 Ex. 275; 19 L. J. Ex. 289 -	51
British Linen Co. <i>v.</i> Drummond (1830), 10 B. & C. 903 -	47, 48
Brocklebank, <i>In re</i> (1889), 23 Q. B. D. 461; 58 L. J. Q. B. 375 -	157, 164
Brookes <i>v.</i> Drysdale (1877), 3 C. P. D. 52 -	76
Brown <i>v.</i> McLachlan (1872), L. R. 4 P. C. 543; 42 L. J. P. C. 18 -	223
Browne <i>v.</i> Burton (1847), 5 D. & L. 289; 17 L. J. Q. B. 49 -	66
Browning <i>v.</i> Wright (1799), 2 B. & P. 13 -	68, 78, 80, 85
Buccleuch (The Duke of) (1889), 15 P. D. 86 -	153
Budgett, <i>In re</i> , [1894] 2 Ch. 557; 63 L. J. Ch. 847 -	169
Bullen <i>v.</i> Denning (1826), 5 B. & C. 842 -	72
Burdett, <i>In re</i> (1888), 20 Q. B. D. 310; 57 L. J. Q. B. 263 -	89, 208
Burton <i>v.</i> Reeve (1847), 16 M. & W. 307; 16 L. J. Ex. 85 -	150
Bush <i>v.</i> Watkins (1851), 14 Beav. 425 -	68
— <i>v.</i> Whitehaven Trustees (1888), 52 J. P. 392 -	59
Butler <i>v.</i> Duncombe (1719), 1 P. Wms. 449 -	67

C.		PAGE
<i>Cahill v. The L. & N. W. Ry. Co.</i> (1861), 30 L. J. C. P. 289	-	176
<i>Caledonian Ry. Co. v. North British Ry. Co.</i> (1881), 6 App. Cas. 114-		38,
		39, 143, 144
— <i>v. Ogilvy</i> (1856), 2 Macq. 229	-	25
— <i>v. Walker's Trustees</i> (1882), 7 App. Cas. 259	-	25
<i>Callender, Sykes & Co. v. Colonial Secretary of Lagos and Davies</i> (1891), A. C. 460; 60 L. J. P. C. 33	-	111
<i>Campbell, Ex parte</i> (1870), L. R. 5 Ch. 703	-	172
— <i>v. Campbell</i> (1880), 5 App. Cas. 787	-	25
— <i>v. Jones</i> (1796), 6 T. R. 570	-	83
<i>Cann v. Cann</i> (1830), 3 Sim. 447	-	13, 14
<i>Carpenter v. Cresswell</i> (1827), 4 Bing. 409	-	83
<i>Carter v. Scargill</i> (1875), L. R. 10 Q. B. 564	-	85
<i>Castro v. The Queen</i> (1881), 6 App. Cas. 229; 50 L. J. Q. B. 497	-	29
<i>Chamberlain v. Napier</i> (1880), 15 Ch. D. 614; 49 L. J. Ch. 628	-	45
<i>Chambers v. Brailsford</i> (1816), 19 Ves. 652	-	250
<i>Chance v. Adams</i> (1897), 1 Ld. Ray. 77	-	115
<i>Chapman, In re</i> , [1896] 1 Ch. 323	-	193
— <i>v. Black</i> (1838), 4 Bing. N. C. 187	-	58
<i>Chatenay v. Brazilian Submarine Telegraph Co.</i> , [1891] 1 Q. B. 79;		
(1890), 60 L. J. Q. B. 295	-	50
<i>Chester (City of)</i> (1884), 9 P. D. 182	-	26, 93
<i>Chorlton v. Lings</i> (1868), L. R. 4 C. P. 374; 38 L. J. C. P. 25-		158
<i>Chudleigh's Case</i> (1589-95), 1 Co. 330, Part I. 134 a	-	129
<i>Church v. Mundy</i> (1808), 15 Ves. 396	-	32, 245
<i>Churchill v. Crease</i> (1828), 5 Bing. 177	-	130, 213
<i>City and South London Ry. Co. v. London County Council</i> , [1891]		
2 Q. B. 513; 60 L. J. M. C. 149	-	182
<i>Clan Gordon (The)</i> (1882), 7 P. D. 190	-	220
<i>Clark v. Adie</i> (No. 2) (1877), 2 App. Cas. 423; 46 L. J. Ch. 598	-	101
— <i>v. Wallond</i> (1883), 52 L. J. Q. B. 320	-	173
<i>Clarke v. Bradlaugh</i> (1881), 8 Q. B. D. 63; 51 L. J. Q. B. 1	-	221
<i>Claydon v. Green</i> (1868), L. R. 3 C. P. 511; 37 L. J. C. P. 226	-	124
<i>Clayton v. Gregson</i> (1836), 5 Ad. & Ell. 302	-	60
— <i>v. Lord Nugent</i> (1844), 13 M. & W. 200; 13 L. J. Ex. 363	-	237,
		255, 256
<i>Clegg v. Hands</i> (1890), 44 Ch. D. 503; 59 L. J. Ch. 477	-	85
— <i>v. Levy</i> (1812), 3 Camp. 166	-	50
<i>Cliff's Trusts, In re</i> , [1892] 2 Ch. 229; 61 L. J. Ch. 130	-	229
<i>Clyde Navigation (Trustees of) v. Laird</i> (1883), 8 App. Cas. 658-		127, 173
<i>Cockburn v. Alexander</i> (1848), 6 C. B. 791; 18 L. J. C. P. 74	-	69, 94
<i>Collinson v. Lister</i> (1855), 20 Beav. 356; 24 L. J. Ch. 762	-	43
<i>Colpoys v. Colpoys</i> (1822), Jac. 451	-	256
<i>Colquhoun v. Brooks</i> (1888), 21 Q. B. D. 52	-	110
— <i>v. ———</i> (1887), 19 Q. B. D. 400	-	112
— <i>v. ———</i> (1889), 14 App. Cas. 493; 59 L. J. Q. B. 53	-	145,
		153

	PAGE
Colquhoun v. Heddon (1890), 25 Q. B. D. 129; 59 L. J. Q. B. 465	- 110, 148
Constantine v. Constantine (1801), 6 Ves. 100	- 235, 250
Cood v. Cood (1863), 33 Beav. 314; 33 L. J. Ch. 273	- 45
Coomber v. Justices of Berks (1882), 9 Q. B. D. 17; 51 L. J. Q. B. 297	- 115
Cooper v. Waldegrave (Earl) (1840), 2 Beav. 282	- 44, 48
—— v. Whittingham (1880), 15 Ch. D. 501; 49 L. J. Ch. 752	- 199
Cope v. Doherty (1858), 4 K. & J. 367; 27 L. J. Ch. 600	- 108, 133, 167
Copeland, Ex parte (1852), 2 D. M. & G. 914; 22 L. J. Bank. 17	- 166
Copeman v. Gallant (1716), 1 P. Wms. 314	- 119
Corbett, Ex parte (1880), 14 Ch. D. 122; 49 L. J. Bk. 74	- 163
Courtauld v. Legh (1869), L. R. 4 Ex. 126; 38 L. J. Ex. 45	- 148
Courtney v. Taylor (1843), 6 M. & G. 851	- 79
Cox v. Hakes (1890), 15 App. Cas. 506; 60 L. J. Q. B. 89	- 157
Craft v. Boite (1681), 1 W. Saund. 246 b	- 36
Crane v. Lawrence (1890), 25 Q. B. D. 152; 59 L. J. M. C. 110	- 205
Crespigny v. Wittenoom (1792), 4 T. R. 790	- 119, 120
Croft v. Lumley (1858), 6 H. L. Cas. 672; 27 L. J. Q. B. 321	- 200
Crofts v. Taylor (1887), 19 Q. B. D. 524; 56 L. J. M. C. 137	- 132, 145
Crompton v. Jarratt (1885), 30 Ch. D. 298; 54 L. J. Ch. 1109	- 75
Crowder v. Stewart (1880), 16 Ch. D. 368; 50 L. J. Ch. 136	- 122
Cumberland v. Bowes (1854), 15 C. B. 348; 24 L. J. C. P. 46	- 54
Curtis v. Stovin (1889), 22 Q. B. D. 513; 58 L. J. Q. B. 174	- 107, 161

D.

Dakins v. Seaman (1842), 9 M. & W. 777	- 206
Danby v. Coutts & Co (1885), 29 Ch. D. 500; 54 L. J. Ch. 577	- 75
Dashwood v. Magniac, [1891] 3 Ch. 306; 60 L. J. Ch. 809	- 17
Davies v. Evans (1882), 9 Q. B. D. 238; 51 L. J. M. C. 132	- 155, 203
Davis & Sons v. Taff Vale Ry. Co., [1895] A. C. 542; 64 L. J. Q. B. 488	- 188
Daw v. The Metropolitan Board of Works (1862), 12 C. B. N. S. 161; 31 L. J. O. P. 223	- 223
Dawes, Ex parte (1886), 17 Q. B. D. 275	- 76
—— v. Tredwell (1881), 18 Ch. D. 354	- 75
Dawson v. Paver (1847), 5 Hare, 415; 16 L. J. Ch. 274	- 179
Dean v. Green (1882), 8 P. D. 79	- 127
De la Vega v. Vianna (1830), 1 B. & Ad. 284	- 47, 48
Denn d. Moore v. Mellor (1794), 5 T. R. 559	- 257
Dent v. Clayton (1864), 33 L. J. Ch. 503	- 252
Devonshire (Duke of) v. O'Connor (1890), 24 Q. B. D. 468; 59 L. J. Q. B. 206	- 21, 125
Dickenson v. Fletcher (1873), L. R. 9 C. P. 1; 43 L. J. M. C. 25	- 166
Dickinson v. Fletcher (1873), 29 L. T. N. S. 540	- 204
Diggle v. Higgs (1877), 2 Ex. D. 422; 46 L. J. Ex. 721	- 112
Dimech v. Corlett (1858), 12 Moore, P. C. O. 199	- 93

	PAGE
Di Sora <i>v.</i> Philipps (1863), 10 H. L. Cas. 624; 33 L. J. Ch. 129	- 49
Dixon <i>v.</i> Caledonian, &c. Ry. Co. (1880), 5 App. Cas. 820	- 184
Dobbs <i>v.</i> Grand Junction Water Works Co. (1882), 9 Q. B. D. 151	- 220
Dodds <i>v.</i> Shepherd (1876), 1 Ex. D. 75; 45 L. J. Ex. 457	- 216
Doe d. Bagnall <i>v.</i> Harvey (1825), 4 B. & C. 610	- 242
— d. Bean <i>v.</i> Halley (1798), 8 T. R. 5	- 242
— d. Bywater <i>v.</i> Brandling (1828), 7 B. & C. 643	- 120
— d. Ellis <i>v.</i> Owens (1842), 10 M. & W. 514; 12 L. J. Ex. 53	- 141, 171
— d. Gallini <i>v.</i> Gallini (1833), 5 B. & Ad. 621	- 235, 247
— d. Hiscocks <i>v.</i> Hiscocks (1839), 5 M. & W. 363; 9 L. J. Ex. 27	- 238
— d. Howell <i>v.</i> Thomas (1840), 1 M. & G. 335	- 245
— d. Leicester <i>v.</i> Biggs (1809), 2 Taunt. 109	- 88, 250, 251
— d. Lewis <i>v.</i> Bingham (1821), 4 B. & Ald. 672	- 90
— d. Mitchinson <i>v.</i> Carter (1798), 8 T. R. 57, 300	- 200
— d. Pearson <i>v.</i> Ries (1832), 8 Bing. 178	- 58
— d. Scruton <i>v.</i> Snaith (1832), 8 Bing. 146	- 201
— d. The Bishop of Rochester <i>v.</i> Bridges (1831), 1 B. & Ad. 847	- 205, 206
— d. Willis <i>v.</i> Martin (1790), 4 T. R. 39	- 125
— d. Wright <i>v.</i> Jesson (1816), 5 M. & S. 95	- 232, 249
— <i>v.</i> Dring (1814), 2 M. & S. 448	- 257
— <i>v.</i> Lyford (1816), 4 M. & S. 550	- 255
— <i>v.</i> Wilkinson (1788), 2 T. R. 209	- 257
Don <i>v.</i> Lippman (1837), 5 Cl. & F. 1	- 48
Dore <i>v.</i> Gray (1788), 2 T. R. 358	- 210
Dossee <i>v.</i> Mullick (1857), 6 Moo. Ind. App. Cas. 526	- 238
Douglas <i>v.</i> Patrick (1790), 3 T. R. 683	- 102
Dover Gas Light Co. <i>v.</i> Mayor, &c. of Dover (1855), 7 D. M. & G. 545	- 184
Dryden <i>v.</i> Overseers of Putney (1876), 1 Ex. D. 223	- 176
Dudgeon <i>v.</i> Thomson (1877), 3 App. Cas. 34	- 101
Dudley (Corporation), <i>In re</i> (1881), 8 Q. B. D. 86; 51 L. J. Q. B. 121	- 184
Dunbar (Magistrates) <i>v.</i> Roxburghe (1835), 3 Cl. & F. 335	- 169
Dunelm, The (1884), 9 P. D. 164; 53 L. J. P. 81	- 186
Dunlop & Sons <i>v.</i> Balfour, Williamson & Co., [1892] 1 Q. B. 507; 61 L. J. Q. B. 354	- 14

E.

East and West India Dock Co. <i>v.</i> Hill (1882), 22 Ch. D. 14; 52 L. J. Ch. 44	- 162
Eastern Counties and L. & Bl. Ry. <i>v.</i> Marriage (1860), 9 H. L. Cas. 32; 31 L. J. Ex. 73	- 123
Eaton <i>v.</i> Lyon (1798), 3 Ves. 689	- 52
Ebbs <i>v.</i> Boulnois (1875), L. R. 10 Ch. 479; 44 L. J. Ch. 691	- 196
Edinburgh and Glasgow Ry. Co. <i>v.</i> Linlithgow (1859), 3 Macq. H. L. Cas. 691	- 122
Ellen <i>v.</i> Topp (1851), 6 Ex. 424; 20 L. J. Ex. 241	- 83, 85
Elliott <i>v.</i> Turner (1845), 2 C. B. 446; 15 L. J. C. P. 49	- 98

TABLE OF CASES REFERRED TO.

XXV

	PAGE
Ely (The Dean, &c. of) <i>v.</i> Bliss (1842), 5 Beav. 574; 11 L. J. Ch. 351 -	197
Emanuel <i>v.</i> Constable (1827), 3 Russ. 436 - - - -	119, 120
Emmens <i>v.</i> Elderton (1853), 4 H. L. Cas. 624 - - - -	103
England (Bank of) <i>v.</i> Vagliano Bros., [1891] A. C. 107 - - -	168
English and Scottish Merc. Invest. Co. <i>v.</i> Brunton, [1892] 2 Q. B. 700; 62 L. J. Q. B. 136 - - - -	53
Enohin <i>v.</i> Wylie (1862), 10 H. L. C. 1; 31 L. J. Ch. 402 - - -	225
Evans <i>v.</i> Vaughan (1825), 4 B. & C. 261 - - - -	68
— <i>v.</i> Williams (1865), 2 Dr. & Sm. 324 - - - -	192
Everett <i>v.</i> Wells (1841), 2 M. & G. 269; 10 L. J. C. P. 81 - -	151
Ewart <i>v.</i> Williams (1854), 3 Drew. 21 - - - -	134
Ewing <i>v.</i> Orr Ewing (1885), 10 App. Cas. 453 - - - -	29

F.

Farrall <i>v.</i> Hilditch (1859), 5 C. B. N. S. 840; 28 L. J. C. P. 221 - 5, 6, 78	
Fellowes <i>v.</i> Clay (1843), 4 Q. B. 313; 12 L. J. Q. B. 202 - -	120, 134
Fenwick <i>v.</i> Schmalz (1868), L. R. 3 C. P. 313; 37 L. J. C. P. 78 - 72, 147	
Fisher <i>v.</i> Prince (1763), 3 Burr. 1363 - - - -	7
Fitzgerald <i>v.</i> Champneys (1861), 2 J. & H. 31; 30 L. J. Ch. 777 - 214, 215, 219	
Fletcher <i>v.</i> Lord Sondes (1826), 3 Bing. 501 - - - -	147, 204
Foley <i>v.</i> Fleetwood (1858), 3 H. & N. 769; 28 L. J. Ex. 100 - -	202
Ford, Ex parte (1885), 16 Q. B. D. 305; 55 L. J. Q. B. 406 - -	59
— <i>v.</i> Beech (1848), 11 Q. B. 852; 17 L. J. Q. B. 114 - - -	69
Fordyce <i>v.</i> Bridges (1847), 1 H. L. Cas. 1 - - - -	132
Fortescue <i>v.</i> Vestry of St. Mathew, Bethnal Green, [1891] 2 Q. B. 170; 60 L. J. M. C. 172 - - - -	207
Foster's Case (1615), 6 Rep. p. 107, Part XI. - - - -	215, 219
Foster <i>v.</i> Banbury (1829), 3 Sim. 40 - - - -	120
Fowell <i>v.</i> Tranter (1864), 3 H. & C. 458; 34 L. J. Ex. 6 - -	59
Fowle <i>v.</i> Welsh (1822), 1 B. & C. 29 - - - -	81
Fowler <i>v.</i> Hunter (1829), 3 Y. & J. 506 - - - -	54
— <i>v.</i> Padget (1798), 7 T. R. 509 - - - -	146
Fraser <i>v.</i> Ehrensperger (1883), 12 Q. B. D. 310; 53 L. J. Ch. 73 -	13
Freeman <i>v.</i> Moyes (1834), 1 Ad. & E. 338 - - - -	196
Freke <i>v.</i> Lord Carbery (1873), L. R. 16 Eq. 461 - - - -	228
Furnival <i>v.</i> Coombes (1843), 5 M. & G. 736; 12 L. J. C. P. 265 -	88

G.

Gainsford <i>v.</i> Griffith (1678), 1 Sand. 60 a - - - -	85
Galloway <i>v.</i> Mayor, &c. of London (1866), L. R. 1 H. L. 34; 35 L. J. Ch. 477 - - - -	183
Gandy <i>v.</i> Gandy (1885), 30 Ch. D. 57; 54 L. J. Ch. 1154 - -	69
Gard <i>v.</i> Commissioners of Sewers of London (1883), 49 L. T. 325 -	218
— <i>v.</i> — (1885), 28 Ch. D. 486; 54 L. J. Ch. 698 - - - -	22

	PAGE
Garnett <i>v.</i> Bradley (1877), 2 Ex. D. 349 - - - -	217
— <i>v.</i> — (1878), 3 App. Cas. 944 - - - -	218
Gathercole <i>v.</i> Smith (1881), 44 L. T. 439 - - - -	20
Gether <i>v.</i> Capper (1855), 15 C. B. 696; 24 L. J. C. P. 69 - - -	94
Gibbs <i>v.</i> Fremont (1853), 9 Ex. 25; 22 L. J. Ex. 302 - - -	44
Gildart <i>v.</i> Gladstone (1809), 11 East 675 - - - -	201
Giles <i>v.</i> Melsom (1873), L. R. 6 H. L. 24; 42 L. J. C. P. 122 - 150, 251	
Giovanni Daputo <i>v.</i> James Wyllie & Co. (1874), L. R. 5 P. C. 482; 43 L. J. Ad. 20 - - - -	198
Gittens <i>v.</i> Steele (1818), 1 Swanst. 24 - - - -	235
Glaholm <i>v.</i> Barker (1865), L. R. 1 Ch. 223; 35 L. J. Ch. 259 - -	222
Glyn, Mills & Co. <i>v.</i> East and West India Docks (1882), 7 App. Cas. 591 - - - -	94
Goblett <i>v.</i> Beechy (1829), 3 Sim. 24 - - - -	60
Goldham <i>v.</i> Edwards (1856), 25 L. J. C. P. 223 - - - -	103
Goldshede <i>v.</i> Swan (1847), 1 Ex. 154; 16 L. J. Ex. 284 - - -	55
Goodtitle <i>v.</i> Bailey (1777), 2 Cowp. 597 - - - -	68
Gordon <i>v.</i> Gordon (1871), L. R. 5 H. L. 254 - - - 232, 238, 253	
Gowan <i>v.</i> Wright (1886), 18 Q. B. D. 201; 56 L. J. Q. B. 131 - 160, 164	
Graff <i>v.</i> Evans (1882), 8 Q. B. D. 373; 51 L. J. M. C. 25 - -	205
Grant <i>v.</i> Maddox (1846), 16 L. J. Ex. 227 - - - -	55
Graves <i>v.</i> Legg (1854), 9 Ex. 709; 23 L. J. Ex. 228 - 36, 84, 85	
Great Central Gas Consumers' Co. <i>v.</i> Clarke (1862), 13 C. B. N. S. 838; 32 L. J. C. P. 41 - - - -	219
Great Western Ry. Co. <i>v.</i> Railway Commissioners (1881), 50 L. J. Q. B. 483 - - - -	27
— <i>v.</i> Swindon and Cheltenham Ry. Co. (1884), 9 App. Cas. 787; 53 L. J. Ch. 1075 - -	147
Greaves <i>v.</i> Tofield (1880), 14 Ch. D. 563; 50 L. J. Ch. 118 - 172, 174	
Green <i>v.</i> Lord Penzance (1881), 6 App. Cas. 657; 51 L. J. Q. B. 25 - 199	
— <i>v.</i> The Queen (1876), 1 App. Cas. 513 - - - -	159
Gregory's Case (1596), 3 Coke, 295, Part VI. - - - -	221
Grey <i>v.</i> Pearson (1857), 6 H. L. Cas. 61; 26 L. J. Ch. 473 - 38, 59, 82, 143, 236, 239	
Griffith, Ex parte (1883), 23 Ch. D. 69; 52 L. J. Ch. 717 - -	173
— <i>v.</i> Harrison (1792), 4 T. R. 737 - - - -	104
Grisewood, Ex parte (1859), 4 De G. & J. 544; 28 L. J. Ch. 769 -	212

H.

Hack <i>v.</i> London Provident Building Society (1883), 23 Ch. D. 103; 52 L. J. Ch. 541 - - - -	18, 173
Hadley <i>v.</i> Perks (1866), L. R. 1 Q. B. 444; 35 L. J. M. C. 177 - -	149
Hall, In re (1888), 21 Q. B. D. 137; 57 L. J. Q. B. 494 - - -	164
— <i>v.</i> Cazenove (1804), 4 East, 477 - - - -	40
— <i>v.</i> Franklin (1838), 3 M. & W. 259 - - - -	161
— <i>v.</i> Warren (1861), 9 H. L. Cas. 420 - - - -	224
Hallett's Estate, In re (1879), 13 Ch. D. 696; 49 L. J. Ch. 415 -	8

	PAGE
<i>Hallewell v. Morell</i> (1840), 1 M. & G. 367 - - - -	102
<i>Halton v. Cove</i> (1830), 1 B. & Ad. 538 - - - -	120
<i>Hamlet, In re</i> (1888), 39 Ch. D. 426; 58 L. J. Ch. 242 - -	237
<i>Hamlyn & Co. v. Wood & Co.</i> , [1891] 2 Q. B. 488; 60 L. J. Q. B. 734 -	79
<i>Hammersmith, &c. Ry. Co. v. Brand</i> (1869), L. R. 4 H. L. 171; 38	
L. J. Q. B. 265 - - - - -	123
<i>Hampton v. Holman</i> (1877), 5 Ch. D. 183; 46 L. J. Ch. 248 - -	242
<i>Harbert's Case</i> (1884), 2 Coke, Part III. - - - -	129
<i>Harrington v. Harrington</i> (1868), L. R. 3 Ch. 564; 37 L. J. Ch. 593	241
<i>Harrison, In re</i> (1885), 30 Ch. D. 390; 55 L. J. Ch. 799 - -	231, 233
— <i>v. Anderston Foundry Co.</i> (1876), 1 App. Cas. 574 - -	100
— <i>v. Blackburn</i> (1864), 17 C. B. N. S. 678; 34 L. J. C. P. 109	71
<i>Hart v. Standard Marine Insurance Co.</i> (1889), 22 Q. B. D. 499; 58	
L. J. Q. B. 284 - - - - -	32, 96
<i>Hassells v. Simpson</i> (1781), 1 Doug. 89 - - - - -	5
<i>Hawkins v. Gathercole</i> (1855), 6 D. M. & G. 1; 24 L. J. Ch. 332 - 216,	218
<i>Hay v. Earl of Coventry</i> (1789), 3 T. R. 83 - - - - -	39, 246
<i>Haynes v. Haynes</i> (1861), 1 Dr. & Sm. 426; 30 L. J. Ch. 578 - -	43
<i>Henderson v. Sherborne</i> (1837), 2 M. & W. 236 - - - -	207
<i>Henty v. Wrey</i> (1882), 21 Ch. D. 332 - - - - -	10, 22
<i>Hesse v. Stevenson</i> (1803), 3 B. & P. 565 - - - - -	71
<i>Heydon's Case</i> (1584), 2 Coke, p. 18, Part III. 7 b - 36, 130, 133,	197
<i>Hickson v. Darlow</i> (1883), 23 Ch. D. 690; 52 L. J. Ch. 453 - -	193
<i>Hill v. Crook</i> (1873), L. R. 6 H. L. 265; 42 L. J. Ch. 702 - -	244
— <i>v. Evans</i> (1862), 4 De G. F. & J. 288; 31 L. J. Ch. 457 - -	99
— <i>v. Hall</i> (1876), 1 Ex. D. 411; 45 L. J. M. C. 153 - -	216, 218
<i>Hills v. The London Gas Light Co.</i> (1857), 27 L. J. Ex. 60 - -	98
<i>Hincks & Sons v. Safety Lighting Co.</i> (1876), 4 Ch. D. 607; 46 L. J.	
Ch. 185 - - - - -	101
<i>Hitchcock v. Way</i> (1837), 6 A. & El. 943 - - - - -	195
<i>Hobson v. Middleton</i> (1827), 6 B. & C. 295 - - - - -	102, 103
<i>Hodder v. Williams</i> , [1895] 2 Q. B. 663 - - - - -	14
<i>Hodgson v. Bell</i> (1890), 24 Q. B. D. 525; 59 L. J. Q. B. 231 - -	166
<i>Holland's Case</i> (1597), 2 Coke, p. 472, Part IV. 76 a - - -	175
<i>Holles v. Carr</i> (1676), 3 Swans. 638 - - - - -	77
<i>Holman v. Johnson</i> (1775), 1 Cowp. 341 - - - - -	50
<i>Hope v. Hope</i> (1857), 8 D. M. & G. 731; 26 L. J. Ch. 417 - -	44, 48
<i>Hornby v. Cardwell</i> (1881), 8 Q. B. D. 329; 51 L. J. Q. B. 89 - -	3
<i>Horner, In re</i> (1887), 37 Ch. D. 695; 57 L. J. Ch. 211 - - -	245
<i>Hornsey Local Board v. Monarch Investment Building Society</i> (1889),	
24 Q. B. D. 1; 59 L. J. Q. B. 105 - - - - -	131, 145
<i>Hotham v. East India Company</i> (1779), 1 Doug. 272 - - -	52
— <i>v. ————</i> (1787), 1 T. R. 638 - - - - -	84
<i>Hough v. Windus</i> (1884), 12 Q. B. D. 224; 53 L. J. Q. B. 165 - -	150
<i>Huber v. Steiner</i> (1835), 2 Bing. N. C. 202 - - - - -	48
<i>Hudson v. Ede</i> (1867), L. R. 2 Q. B. 566; 38 L. J. Q. B. 273 - -	95
<i>Hughes v. The Chester & Holyhead Ry. Co.</i> (1861), 1 Drew. & Sm.	
524; 31 L. J. Ch. 97 - - - - -	121, 188

	PAGE
Hull Dock Co. v. Browne (1831), 2 B. & Ad. 43 - - -	201
— v. La Marche (1828), 8 B. & C. 42 - - -	187
Hume v. Rundell (1824), 2 S. & S. 174 - - -	40
Hunter v. Nockolds (1850), 1 Mac. & G. 640; 19 L. J. Ch. 177 -	115
Hurlbatt v. Barnett & Co. (1892), [1893], 1 Q. B. 77; 62 L. J. Q. B. 1 -	168
Hutchison v. Bowker (1839), 5 M. & W. 535 - - -	55
Hutton v. Harper (1876), 1 App. Cas. 464 - - -	162

I.

Ilchester (The Earl of), Ex parte (1803), 7 Ves. 348- - -	243
Innes v. Johnson (1799), 4 Ves. 568 - - -	235
Isaacs v. Royal Insurance Co. (1870), L. R. 5 Ex. 296; 39 L. J. Ex. 189 - - -	41

J.

Jackson v. Union Mar. Ins. Co. (1873), L. R. 8 C. P. 572; 42 L. J. C. P. 284 - - -	59
Jacobs v. Crédit Lyonnais (1884), 12 Q. B. D. 589; 53 L. J. Q. B. 156 - - -	30, 46
James v. Catherwood (1823), 3 D. & R. 190 - - -	51
— v. Emery (1818), 8 Taunt. 245; 2 Moore, 195 - - -	86, 87
Jarmain v. Hooper (1843), 6 M. & Gr. 827 - - -	12
Jay v. Johnstone (1892), [1893] 1 Q. B. 25; 62 L. J. Q. B. 128 -	174
Jayne v. Hughes (1854), 10 Ex. 430; 24 L. J. Ex. 115 - - -	40, 66
Jeffries v. Alexander (1860), 8 H. L. Cas. 594; 31 L. J. Ch. 9 -	200
Jenner v. Jenner (1866), L. R. 1 Eq. 361; 35 L. J. Ch. 329 -	74, 75
Jersey (Earl of) v. Guardians of Poor of Neath (1889), 22 Q. B. D. 555; 58 L. J. Q. B. 573 - - -	72
Jesson v. Wright (1820), 2 Bligh, 1 - - -	247
Jodrell, In re (1890), 44 Ch. D. 590; 59 L. J. Ch. 538 - - -	8
Johnes v. Johnes (1814), 3 Dow, App. Cas. 1 - - -	198
Johnson v. Proctor (1611), Yelv. 175 - - -	78
— v. Raylton (1881), 7 Q. B. D. 438; 50 L. J. Q. B. 753 -	28
Johnston v. In re (1884), 26 Ch. D. 538; 53 L. J. Ch. 645 - - -	260
Jolly v. Young (1794), 1 Esp. N. P. C. 186 - - -	55
Jones v. Bennett (1890), 63 L. T. 705 - - -	196
— v. Smart (1785), 1 T. R. 44 - - -	151
Jortin v. South Eastern Ry. Co. (1855), 6 D. M. & G. 270; 24 L. J. Ch. 343 - - -	208
Julius v. The Lord Bishop of Oxford (1880), 5 App. Cas. 214; 49 L. J. Q. B. 577 - - -	155, 166

TABLE OF CASES REFERRED TO.

xxix

K.

	PAGE
Kay v. Goodwin (1830), 6 Bing. 576	- 212
Kearns v. The Cordwainers' Co. (1859), 6 C. B. N. S. 388; 28 L. J. C. P. 285	- 120
Keightley v. Watson (1849), 3 Ex. 716; 18 L. J. Ex. 339	- 88
Kenrick v. Lawrence (1890), 25 Q. B. D. 99	- 115
Key v. Key (1853), 4 D. M. & G. 73; 22 L. J. Ch. 641	- 240
Kimbray v. Draper (1868), L. R. 3 Q. B. 160; 37 L. J. Q. B. 80	- 195, 196
King (The) v. Cartwright (1791), 4 T. R. 490	- 115
——— v. Great Bolton (1828), 8 B. & C. 71	- 148
——— v. Great Driffield (1828), 8 B. & C. 684	- 170
——— v. Hodnett (1786), 1 T. R. 96	- 204
——— v. Justices of Leicester (1827), 7 B. & C. 6	- 154
——— v. Justices of Middlesex (1831), 2 B. & Ad. 818	- 117, 196, 210
——— v. Leek Wootton (1812), 16 East 118	- 170
——— v. Loxdale (1758), 1 Burr. 445	- 165, 166
——— v. Lyme Regis (1779), 1 Doug. 80	- 6
——— v. Marks (1802), 3 East 157	- 115
——— v. Townrow (1830), 1 B. & Ad. 465	- 150
——— v. Williams (1758), 1 Wm. Bl. 93	- 115, 160
Kingston-upon-Hull Dock Co. v. La Marche (1828), 2 B. & C. 42	- 187
Kirk v. Nowill (1786), 1 T. R. 118	- 186
Kitchen v. Shaw (1837), 6 Ad. & Ell. 729	- 147
Kloebe, In re (1884), 28 Ch. D. 175	- 47
Kutner v. Phillips, [1891] 2 Q. B. 267; 60 L. J. Q. B. 505	- 221

L.

Labouchere v. Dawson (1872), L. R. 13 Eq. 322; 41 L. J. Ch. 427	- 15
Laird v. Briggs (1881), 19 Ch. D. 22	- 150
Lamplugh v. Norton (1889), 22 Q. B. D. 452; 58 L. J. Q. B. 279...	107, 206
Lampon v. Corke (1822), 5 B. & Ald. 606	- 91
Latless v. Holmes (1792) 4 T. R. 660	- 116
Lauri v. Renad, [1892] 3 Ch. 402; 61 L. J. Ch. 580	- 195
Leach v. Jay (1877), 6 Ch. D. 496; 46 L. J. Ch. 499	- 248
Leader v. Duffey (1888), 13 App. Cas. 294; 58 L. J. P. O. 13	- 237
Leduc v. Ward (1888), 20 Q. B. D. 475; 57 L. J. Q. B. 379	- 94
Lee v. Milner (1837), 2 Y. & C. Ex. 611	- 181
Leech v. North Staffordshire Ry. Co. (1860), 29 L. J. M. C. 150	- 19
Leeds & Liverpool Canal Co. v. Hustler (1823), 1 B. & C. 424	- 187
Lees v. Summersgill (1811), 17 Ves. 508	- 119, 120
Leroux v. Brown (1852), 12 C. B. 801; 22 L. J. C. P. 1	- 110
Lester v. Garland (1808), 15 Ves. 248	- 41
Lewis v. Nicholson (1852), 18 Q. B. 503; 21 L. J. Q. B. 311	- 59
Lincoln College Case (1595), 2 Coke, p. 161, Part III.	- 129
Lindus v. Melrose (1858), 3 H. & N. 177; 27 L. J. Ex. 326	- 81

	PAGE
Lion (The) (1869), L. R. 2 P. C. 525; 38 L. J. Ad. 51 - - -	142
Lion Insurance Association v. Tucker (1883), 12 Q. B. D. 176; 53 L. J. Q. B. 185 - - -	131
Liverpool Borough Bank v. Turner (1860), 2 D. F. & J. 502; 30 L. J. Ch. 379 - - -	200
Llewellyn v. Earl of Jersey (1843), 11 M. & W. 183; 12 L. J. Ex. 243	90
Lloyd v. Guibert (1865), L. R. 1 Q. B. 115; 35 L. J. Q. B. 74 - -	45
Locke v. Dunlop (1888), 39 Ch. D. 387; 56 L. J. Ch. 697 - -	253
Logan v. Courtown (Earl) (1851), 13 Beav. 22; 20 L. J. Ch. 347 -	131
Lohre v. Aitchison (1878), 3 Q. B. D. 558; 47 L. J. Q. B. 534 - -	96
London Association of Shipowners v. London and India Docks Joint Committee, [1892] 3 Ch. 242; 62 L. J. Ch. 294 - - -	185
London and Blackwall Ry. Co. v. Limehouse Board of Works (1856), 3 K. & J. 123; 26 L. J. Ch. 164 - - -	182
London and N. W. Ry. Co. v. Buckmaster (1874), L. R. 10 Q. B. 70, Ex. Ch. 444; 44 L. J. M. C. 180 - - -	20
London and South Western Ry. v. Blackmore (1870), L. R. 4 H. L. 610; 39 L. J. Ch. 713 - - -	91
London, Chatham and Dover Ry. Co. v. Wandsworth Board of Works (1873), L. R. 8 C. P. 185; 42 L. J. M. C. 70 - - -	219
London Clearing Bankers, Committee of v. Commissioners of Inland Revenue, [1896] 1 Q. B. 222 - - -	137, 167
London Joint Stock Bank v. Simmons, [1892] A. C. 201; 61 L. J. Ch. 723 - - -	53
London (Mayor of), Ex parte (1883), 25 Ch. D. 384; 53 L. J. Ch. 6 -	218
Lowther v. Bentinck (1874), L. R. 19 Eq. 166; 44 L. J. Ch. 197 -	236
Lucy v. Levington (1683), 1 Ventris, 175 - - -	179
Lyall v. Edwards (1861), 6 H. & N. 337; 30 L. J. Eq. 193 - -	91
Lybbe v. Hart (1885), 29 Ch. D. 8 - - -	221
Lyn v. Wyn (1662), O. Bridg. C. P. 122 - - -	215, 219

M.

McCowan v. Baine, [1891] A. C. 401 - - -	57
Macdougall v. Paterson (1851), 11 C. B. 755; 21 L. J. C. P. 27 -	189
Mackonochie v. Lord Penzance (1881), 6 App. Cas. 424; 50 L. J. Q. B. 611 - - -	27
M'William v. Adams (1852), 1 Macq. H. L. Cas. 120 - - -	169
Magdalene College Case (1616), 6 Coke, p. 134, Part XI. - -	136
Mallan v. May (1844), 13 M. & W. 511; 14 L. J. Ex. 48 - -	57
Malpas v. Clements (1850), 19 L. J. Q. B. 435 - - -	66
Manchester (Overseers) v. Guardians of Ormskirk Union (1890), 24 Q. B. D. 678; 59 L. J. M. C. 103 - - -	24
Manchester Trust v. Furness, [1895] 2 Q. B. 539; 64 L. J. Q. B. 766 - - -	53
Marlborough (Duke of) v. Lord Godolphin (1750), 2 Ves. Sen. 61 -	104
Marsh v. Higgins (1850), 9 C. B. 551; 19 L. J. C. P. 297 - -	192
Martelli v. Holloway (1872), L. R. 5 H. L. 532; 42 L. J. Ch. 26 -	249
Martin v. Hemming (1854), 10 Ex. 478; 24 L. J. Ex. 3 - -	134

xxxi

Digitized by Google

	PAGE
Municipal Building Society <i>v.</i> Kent (1884), 9 App. Cas. 260; 53 L. J. Q. B. 290 - - - - -	133
Murphy <i>v.</i> Glass (1869), L. R. 2 P. C. 408 - - - - -	103
Murray <i>v.</i> East India Co. (1821), 5 B. & Ald. 204 - - - - -	149, 166

N.

Needham <i>v.</i> Johnson (1884), 1 R. P. C. 49 - - - - -	101
Neilson <i>v.</i> Harford (1841), 8 M. & W. 806; 11 L. J. Ex. 20 - 31, 98, 99	
— <i>v.</i> — (1841), Webs. Pat. Cas. 295 - - - - -	97
New Callao, In re (1882), 22 Ch. D. 484; 52 L. J. Ch. 283 - - - - -	18
Newcastle (Duke of) <i>v.</i> Morris (1870), L. R. 4 H. L. 661 - - - - -	189
Newman's Settled Estates, In re (1874), L. R. 9 Ch. 681; 43 L. J. Ch. 702 - - - - -	172
Newport Bridge, Re (1859), 2 Ell. & Ell. 377; 29 L. J. M. C. 52 - - - - -	154
Newton <i>v.</i> Cowie (1827), 4 Bing. 234 - - - - -	10
Nicholson <i>v.</i> Fields (1862), 7 H. & N. 810; 31 L. J. Ex. 233 - 198, 204	
Nind <i>v.</i> Marshall (1819), 1 B. & B. 319 - - - - -	6, 57, 71, 81
North, In re, Ex parte Hasluck, [1895] 2 Q. B. 264; 64 L. J. Q. B. 694 - - - - -	41
Nuth <i>v.</i> Tamplin (1881), 8 Q. B. D. 247; 51 L. J. Q. B. 177 - - - - -	126

O.

O'Flaherty <i>v.</i> McDowell (1857), 6 H. L. Cas. 142 - - - - -	159
Oriental Bank Corporation <i>v.</i> Wright (1880), 5 App. Cas. 842; 50 L. J. P. C. 1 - - - - -	203
Osborne <i>v.</i> Rowlett (1880), 13 Ch. D. 774; 49 L. J. Ch. 310 - - - - -	9
Oswald <i>v.</i> Berwick (1854), 3 E. & B. 653; 23 L. J. Q. B. 321 - - - - -	160

P.

Palmer <i>v.</i> Johnson (1884), 13 Q. B. D. 351; 53 L. J. Q. B. 348-13, 14, 20	
— <i>v.</i> Mallett (1887), 36 Ch. D. 411; 57 L. J. Ch. 226 - - - - -	87
Pandorf <i>v.</i> Hamilton (1886), 17 Q. B. D. 671; 55 L. J. Q. B. 546 - - - - -	94
Pardo <i>v.</i> Bingham (1869), L. R. 4 Ch. 735 - - - - -	193
Parfitt <i>v.</i> Hember (1867), L. R. 4 Eq. 443 - - - - -	242
Parker <i>v.</i> Marchant (1842), 1 Y. & C. 290; 11 L. J. Ch. 223 - 32, 33, 245	
— <i>v.</i> Tootal (1865), 11 H. L. Cas. 143; 34 L. J. Ex. 198 - - - - -	232
Parkhurst <i>v.</i> Smith (1741-2), Willes, 327 - - - - -	65
Parsons, In re, Stockley <i>v.</i> Parsons (1890), 45 Ch. D. 51 - - - - -	27
Partington <i>v.</i> Att.-Gen. (1869), L. R. 4 H. L. 100; 38 L. J. Ex. 205- 202	
Partridge <i>v.</i> General Council of Medical Education (1890), 25 Q. B. D. 90; 59 L. J. Q. B. 475 - - - - -	190
Patching <i>v.</i> Dubbins (1853), Kay, 1; 23 L. J. Ch. 45 - - - - -	81
Pattison <i>v.</i> Banks (1777), Cowp. 540 - - - - -	119
— <i>v.</i> Luckley (1875), L. R. 10 Ex. 330; 44 L. J. Ex. 180 - - - - -	91

TABLE OF CASES REFERRED TO.

xxxiii

	PAGE
Payler <i>v.</i> Homersham (1815), 4 M. & S. 423 - - - -	75
Pearson, <i>In re</i> , [1892] 2 Q. B. 263; 61 L. J. Q. B. 585 - - -	110
— <i>v.</i> Pearson (1884), 27 Ch. D. 145; 54 L. J. Ch. 32 - - -	15
Pelton Bros. <i>v.</i> Harrison, [1891] 2 Q. B. 422; 60 L. J. Q. B. 742 -	133
Peninsular & Oriental Navig. Co. <i>v.</i> Shand (1865), 3 Moo. P. C. (N. S.) 272 - - - - -	45
Perry <i>v.</i> Skinner (1837), 2 M. & W. 471 - - - - -	141
Pharmaceutical Society <i>v.</i> London Supply Association (1880), 5 Q. B. D. 310; 49 L. J. Q. B. 338 - - - - -	137
Pharmaceutical Society <i>v.</i> London Supply Association (1880), 5 App. Cas. 857; 49 L. J. Q. B. 736 - - - - -	138
Philipps <i>v.</i> Chamberlaine (1798), 4 Ves. 51 - - - - -	252
Philipps <i>v.</i> Eyre (1870), L. R. 6 Q. B. 1; 40 L. J. Q. B. 28 - -	111
— <i>v.</i> Rees (1889), 24 Q. B. D. 17; 59 L. J. Q. B. 1 - - -	133
Philpott <i>v.</i> St. George's Hospital (1857), 6 H. L. Cas. 338; 27 L. J. Ch. 70 - - - - -	200
Pickering <i>v.</i> Ilfracombe Ry. Co. (1868), L. R. 3 C. P. 235; 37 L. J. C. P. 118 - - - - -	89
Pigot's Case (1615), 6 Coke, p. 47, Part XI. - - - - -	89, 90, 91
Pitts <i>v.</i> La Fontaine (1880), 6 App. Cas. 482 - - - - -	26
Planché <i>v.</i> Fletcher (1779), 1 Doug. 251 - - - - -	50
Plimpton <i>v.</i> Malcolmson (1876), 3 Ch. D. 531; 45 L. J. Ch. 505 -	172
— <i>v.</i> Spiller (1877), 6 Ch. D. 412 - - - - -	101
Plumstead Board of Works <i>v.</i> Spackman (1884), 13 Q. B. D. 878; 53 L. J. M. C. 142 - - - - -	164
Pocock <i>v.</i> Pickering (1852), 18 Q. B. 789; 21 L. J. Q. B. 365 - -	142
Pooley's Trustees <i>v.</i> Whetham, No. 2 (1886), 33 Ch. D. 76; 56 L. J. Ch. 41 - - - - -	3
Pordage <i>v.</i> Cole (1681), 1 Wms. Saund. 320 b - - - - -	83, 84
Porter <i>v.</i> Shepherd (1796), 6 T. R. 665 - - - - -	84
Postmaster-General, <i>Ex parte</i> (1879), 10 Ch. D. 595; 48 L. J. Bank. 84	136
Potez <i>v.</i> Glossop (1848), 2 Ex. 191 - - - - -	66
Pretty <i>v.</i> Solby (1859), 26 Beav. 606 - - - - -	214
Pride <i>v.</i> Fooks (1858), 3 De G. & J. 252 - - - - -	245
Pryce <i>v.</i> Monmouthshire C. & Ry. Co. (1879), 4 App. Cas. 197; 49 L. J. Ex. 130 - - - - -	203
Pugh <i>v.</i> Golden Valley Ry. Co. (1880), 15 Ch. D. 330; 49 L. J. Ch. 721 - - - - -	12, 178

Q.

Queen (The) <i>v.</i> Baines (1840), 12 Ad. & Ell. 210 - - - - -	126
— <i>v.</i> Bishop of London (1889), 24 Q. B. D. 213; 59 L. J. Q. B. 169 - - - - -	134
— <i>v.</i> Bradford Navigation Company (1865), 6 B. & S. 631; 34 L. J. Q. B. 191 - - - - -	184
— <i>v.</i> Champneys (1871), L. R. 6 C. P. 384; 40 L. J. C. P. 95 - - - - -	215
— <i>v.</i> Clarence (1888), 22 Q. B. D. 23; 58 L. J. M. C. 10 -	153
— <i>v.</i> Commissioners of Income Tax (1888), 22 Q. B. D. 296; 58 L. J. Q. B. 196 - - - 27, 144, 150, 174, 203	

B.

c

	PAGE
Queen (The) <i>v.</i> Commissioners of Inland Revenue (1888), 21 Q. B. D. 569; 57 L. J. M. C. 92	221
— <i>v.</i> Denton (Inhabitants) (1852), 18 Q. B. 761; 21 L. J. M. C. 207	212
— <i>v.</i> Edwards (1884), 13 Q. B. D. 586; 53 L. J. M. C. 149	15
— <i>v.</i> Griffiths, [1891] 2 Q. B. D. 145; 60 L. J. M. C. 93	194
— <i>v.</i> Hertford College (1878), 3 Q. B. D. 673; 47 L. J. Q. B. 642	135
— <i>v.</i> Ipswich Union (1877), 2 Q. B. D. 269; 46 L. J. M. C. 207	193
— <i>v.</i> Local Government Board (1882), 10 Q. B. D. 309; 52 L. J. M. C. 4	123
— <i>v.</i> London County Council, [1893] 2 Q. B. 454; 63 L. J. Q. B. 4	180
— <i>v.</i> Mawgan (1838), 8 A. & E. 496	212
— <i>v.</i> Monck (1877), 2 Q. B. D. 544; 46 L. J. M. C. 251	163
— <i>v.</i> Most (1881), 7 Q. B. D. 244; 50 L. J. M. C. 113	134
— <i>v.</i> Oastler (1880), 50 L. J. M. C. 4; 43 L. T. 404	220
— <i>v.</i> Pearce (1880), 5 Q. B. D. 386; 49 L. J. M. C. 81	140
— <i>v.</i> Poor Law Commissioners (1838), 6 A. & E. 56	148
— <i>v.</i> Prince (1875), L. R. 2 Q. C. R. 154; 44 L. J. M. C. 122	167
— <i>v.</i> Skeen (1859), 28 L. J. M. C. 91	153
— <i>v.</i> Tithe Commissioners (1849), 14 Q. B. 459; 19 L. J. Q. B. 177	154
— <i>v.</i> Tonbridge Overseers (1884), 13 Q. B. D. 339; 53 L. J. Q. B. 488	162, 164, 197
Quilter <i>v.</i> Heatly (1883), 23 Ch. D. 42	16
— <i>v.</i> Mapleson (1882), 9 Q. B. D. 672; 52 L. J. Q. B. 44	193

R.

Railway Sleepers Supply Co., In re (1885), 29 Ch. D. 204; 54 L. J. Ch. 720	41
Randfield <i>v.</i> Randfield (1860), 6 Jur. N. S. 901; 30 L. J. Ch. 177	40, 231
Rashleigh <i>v.</i> S. E. Ry. Co. (1851), 10 C. B. 612	78
Redfern, In re (1877), 6 Ch. D. 133; 47 L. J. Ch. 17	233, 241, 252
Redgrave <i>v.</i> Hurd (1881), 20 Ch. D. 1; 51 L. J. Ch. 113	24
Redpath <i>v.</i> Allan (1872), L. R. 4 P. C. 511; 42 L. J. Adm. 8	204
Beeves <i>v.</i> Brymer (1799), 4 Ves. 692	234
Reffell <i>v.</i> Reffell (1866), L. R. 1 P. & M. 139; 35 L. J. P. 121	40, 66, 231
Reg. <i>v.</i> Barclay (1881), 8 Q. B. D. 306; 51 L. J. M. C. 27	155, 203
— <i>v.</i> Bishop of Oxford (1879), 4 Q. B. D. 525; 48 L. J. Q. B. 609	135
— <i>v.</i> Endacott, Times, Nov. 2, 1887	2
— <i>v.</i> Frost (1840), 9 C. & P. 129	148
— <i>v.</i> Haughton (1853), 1 El. & Bl. 501; 22 L. J. M. C. 89	122
— <i>v.</i> Payne (1866), L. R. 1 C. C. 27; 35 L. J. M. C. 170	34, 72, 147
— <i>v.</i> S. E. Ry. Co. (1853), 4 H. L. Cas. 471	154

TABLE OF CASES REFERRED TO.

XXXV

	PAGE
Reg. v. Wycombe Ry. Co. (1867), L. R. 2 Q. B. 310; 36 L. J. Q. B. 121 - - - - -	11
Reid v. Reid (1886), 31 Ch. D. 402; 55 L. J. Ch. 294 - - - - -	194
Rex v. Banbury (1834), 1 A. & E. 136 - - - - -	141
— v. Croke (1774), 1 Cowp. 26 - - - - -	187
— v. Hall (1822), 1 B. & C. 122 - - - - -	34, 142
— v. Jackson (1775), Cowp. 297 - - - - -	206
— v. London (Bishop of) (1693), 1 Show. 455 - - - - -	129
— v. Morgan (1737), 2 Stra. 1066 - - - - -	208
— v. Winstanley (1831), 1 Cr. & J. 434 - - - - -	149
Rhodes, In re (1887), 36 Ch. D. 586; 56 L. J. Ch. 825 - - - - -	3
— v. Rhodes (1882), 7 App. Cas. 192; 51 L. J. P. C. 53 - - - - -	233, 240
— v. — (1859), 27 Beav. 413 - - - - -	244, 250
Richardson v. Wilson (1833), 4 B. & Ad. 787 - - - - -	60
Richards v. Easto (1846), 15 M. & W. 244; 15 L. J. Ex. 163 - - - - -	180
— v. McBride (1881), 8 Q. B. D. 119; 51 L. J. M. C. 15 - - - - -	135, 151
Ridgeway v. Muntkittrick (1841), 1 Dr. & War. 84 - - - - -	252
Right ex dem. Compton v. Compton (1808), 9 East, 267 - - - - -	244
Rishdon v. White (1888), 5 Times Law Rep. 59 - - - - -	2
Ritchie v. Atkinson (1808), 10 East, 295 - - - - -	82
River Wear Commissioners v. Adamson (1877), 2 App. Cas. 743; 47 L. J. Q. B. 193 - - - - -	37, 128, 130, 153, 158, 159, 181
Roberts v. Berry (1853), 3 D. M. & G. 285; 22 L. J. Ch. 398 - - - - -	52
— v. Brett (1865), 11 H. L. Cas. 337; 34 L. J. C. P. 241 - - - - -	84
Robertson v. French (1803), 4 East, 130 - - - - -	32, 95
— v. Jackson (1845), 2 C. B. 412; 15 L. J. C. P. 28 - - - - -	56
Robinson v. Bland (1760), 1 W. Bl. 256 - - - - -	45
— v. Canadian Pacific Ry. Co., [1892] A. C. 481; 61 L. J. P. C. 79 - - - - -	169
— v. Emerson (1866), 4 H. & C. 352 - - - - -	207
— v. Robinson (1757), 1 Burr. 38 - - - - -	241
Roddy v. Fitzgerald (1858), 6 H. L. Cas. 823 - - - - -	82, 247, 248
Roe d. Fulham v. Wickett (1741), Willes, 303 - - - - -	257
Rooke v. Lord Kensington (1856), 2 K. & J. 753; 25 L. J. Ch. 795 - - - - -	73, 75
Rosher, In re (1884), 26 Ch. D. 801; 53 L. J. Ch. 722 - - - - -	15, 96
Rosseter v. Cahlmann (1853), 8 Ex. 361; 22 L. J. Ex. 128 - - - - -	107
Roths (Countess of) v. Kirkcaldy Waterworks Commissioners (1882), 7 App. Cas. 694 - - - - -	147, 161
Rouse & Meier, Re (1871), L. R. 6 C. P. 212; 40 L. J. C. P. 145 - - - - -	13
Rubery v. Jervoise (1786), 1 T. R. 229 - - - - -	80
Ruckmayboye v. Lulloobhoy (1851), 8 Moore, P. C. C. 4; 5 Moore, Ind. App. 234 - - - - -	171
Rusby v. Newson (1875), L. R. 10 Ex. 322; 44 L. J. Ex. 143 - - - - -	163
Russell v. Cowley (1835), 1 Cr. M. & B. 864 - - - - -	98
Ryall v. Rolle (1749), 1 Atk. 164 - - - - -	119

S.

	PAGE
<i>Salkeld v. Johnson</i> (1846), 2 C. B. 749 - - - - -	134
—— <i>v. Johnston</i> (1841), 1 Ha. 196; 11 L. J. Ch. 201 - - -	120
<i>Salmon v. Duncombe</i> (1886), 11 App. Cas. 627; 55 L. J. P. C. 69 -	132
<i>Saltoun v. Houston</i> (1824), 1 Bing. 433 - - - - -	77
—— (Ld.) <i>v. Lord Advocate</i> (1860), 3 Macq. 659 - - -	203
<i>Sampson v. Easterby</i> (1829), 9 B. & C. 505; 6 Bing. 644 - - -	77
<i>Sandford v. Raikes</i> (1816), 1 Mer. 646 - - - - -	232
<i>Sandiman v. Breach</i> (1827), 7 B. & C. 96 - - - - -	147
<i>Saunderson v. Piper</i> (1839), 5 Bing. N. C. 425 - - - - -	60
<i>Saward v. Anstey</i> (1825), 2 Bing. 519 - - - - -	68
<i>Scales v. Pickering</i> (1828), 4 Bing. 448 - - - - -	187
<i>Scarborough (Earl) v. Doe d. Savile</i> (1836), 3 A. & E. 897 - -	235
<i>Scott v. Corporation of Liverpool</i> (1858), 3 De G. & J. 334; 28 L. J. Ch. 230 - - - - -	52
<i>Scottish Drainage and Improvement Co. v. Campbell</i> (1889), 14 App. Cas. 139 - - - - -	189
<i>Seddon v. Senate</i> (1810), 13 East, 63 - - - - -	70
<i>Seed v. Higgins</i> (1860), 8 H. L. Cas. 550; 30 L. J. Q. B. 314 - -	99
<i>Selby v. Crystal Palace Gas Co.</i> (1862), 30 Beav. 606 - - - - -	74
—— <i>v. Whittaker</i> (1877), 6 Ch. D. 239; 47 L. J. Ch. 121 - - -	253
<i>Severn v. Clerk</i> (1588), 1 Leo. 122 - - - - -	78
<i>Seward v. "Vera Cruz"</i> (1884), 10 App. Cas. 59; 54 L. J. P. 9 -	218
<i>Shepherd v. Sharp</i> (1856), 1 H. & N. 115; 25 L. J. Ex. 254 - -	180
<i>Sherratt v. Bentley</i> (1833), 3 My. & K. 149 - - - - -	251
<i>Shipman v. Henbest</i> (1790), 4 T. R. 109 - - - - -	209
<i>Shore v. Wilson</i> (1840), 9 Cl. & F. 355 - - - - -	61
<i>Sicklemore v. Thistleton</i> (1817), 6 M. & S. 9 - - - - -	68, 80
<i>Sill v. Worswick</i> (1791), 1 H. Bl. 665 - - - - -	226
<i>Simpson v. Holliday</i> (1866), L. R. 1 H. L. 315; 35 L. J. Ch. 811; 13 W. R. 577 - - - - -	100
—— <i>v. Margitson</i> (1847), 11 Q. B. 23; 17 L. J. Q. B. 81 - - -	56
<i>Sims v. Doughty</i> (1800), 5 Ves. 243 - - - - -	234, 250
<i>Singer v. Hasson</i> (1884), 50 L. T. 326 - - - - -	195
<i>Smith's Estate, In re</i> (1887), 35 Ch. D. 589; 56 L. J. Ch. 726 - -	219
<i>Smith v. Butcher</i> (1878), 10 Ch. D. 113; 48 L. J. Ch. 136 - - -	248
—— <i>v. Doe d. Jersey</i> (1821), 2 Brod. & B. 473 - - - - -	255, 256
—— <i>v. Jeffries</i> (1846), 15 M. & W. 561; 15 L. J. Ex. 325 - - -	60
—— <i>v. Keal</i> (1882), 9 Q. B. D. 340 - - - - -	13
—— <i>v. Lambeth Assessmt. Com.</i> (1882), 10 Q. B. D. 327; 52 L. J. M. C. 1 - - - - -	20
—— <i>v. Packhurst</i> (1741), 3 Atk. 135 - - - - -	34, 65
—— <i>v. Ridgway</i> (1866), L. R. 1 Ex. 331; 35 L. J. Ex. 198 - - -	254
—— <i>v. Thompson</i> (1849), 18 L. J. C. P. 314 - - - - -	56
—— <i>v. Wilson</i> (1832), 3 B. & Ad. 728; 1 L. J. K. B. 194 - - -	55, 60
<i>Solly v. Forbes</i> (1820), 2 B. & B. 38 - - - - -	69, 89
<i>Sorsbie v. Park</i> (1843), 12 M. & W. 146; 13 L. J. Ex. 9 - - -	87
<i>Southcot v. Watson</i> (1745), 3 Atk. 226 - - - - -	250

TABLE OF CASES REFERRED TO.

xxxvii

	PAGE
South Eastern Ry. Co. v. Railway Commrs. (1881), 50 L. J. Q. B. 201 - - - - -	135
Spencer v. Metropolitan Board of Works (1882), 22 Ch. D. 142 - - -	39, 143, 144, 148
Standard Manufacturing Co., In re, [1891] 1 Ch. 627; 60 L. J. Ch. 292 -	157
Stavers v. Curling (1836), 3 Bing. N. C. 355 - - - - -	83
Steavenson v. Oliver (1841), 8 M. & W. 234; 10 L. J. Ex. 338 -	209, 212
Steel v. Dixon (1881), 17 Ch. D. 825; 50 L. J. Ch. 591 - - -	29
Steele v. Hoe (1849), 19 L. J. Q. B. 89 - - - - -	69
Stephenson v. Higginson (1852), 3 H. L. Cas. 638 - - - -	150
Stevens v. Jeacocke (1847), 17 L. J. Q. B. 163 - - - -	205
St. Mary Wigton (Vicar of), Ex parte (1881), 18 Ch. D. 646 - -	21
St. Sepulchre's (Vicar of), Ex parte (1864), 33 L. J. Ch. 372 -	151, 153, 163, 219
Stockton and Darlington Ry. Co. v. Barrett (1844), 7 M. & Gr. 870 -	201
Stone v. Corporation of Yeovil (1876), 1 C. P. D. 691; 45 L. J. C. P. 657 - - - - -	35, 151
Stourbridge Canal Co. v. Wheeley (1831), 2 B. & Ad. 792 - - -	187
Stradling v. Morgan (1560), Plow. 199 - - - - -	115, 216
Straker v. Reynolds (1889), 22 Q. B. D. 262; 58 L. J. Ch. 180 -	2
Stratford v. Bosworth (1813), 2 Ves. & Bea. 341 - - - -	35
Strickland v. Maxwell (1834), 2 C. & M. 539 - - - - -	54
Stringer v. Gardiner (1859), 27 Beav. 35; 28 L. J. Ch. 758 - -	255
Strong ex d. Cummin v. Cummin (1759), 2 Burr. 767 - - -	230
Stroud, In re (1849), 8 C. B. 502; 19 L. J. C. P. 117 - - -	81
Studd v. Cook (1883), 8 App. Cas. 577 - - - - -	228
Styles v. Wardle (1825), 4 B. & C. 908 - - - - -	66
Sullivan v. Mitcalfe (1880), 5 C. P. D. 456; 49 L. J. C. P. 815 -	166
Surtees v. Ellison (1829), 9 B. & C. 750 - - - - -	106, 212
Sutherland (Duke of) v. Heathcote, [1892] 1 Ch. 475; 61 L. J. Ch. 248 - - - - -	6
Sutton v. Sutton (1882), 22 Ch. D. 511; 52 L. J. Ch. 333 - -	115, 125
Sweeting v. Prideaux (1876), 2 Ch. D. 413; 45 L. J. Ch. 378 -	241, 252

T.

Taylor v. Corporation of Oldham (1876), 4 Ch. D. 395; 46 L. J. Ch. 105 - - - - -	121, 145, 152, 177
Taylor v. Corporation of St. Helens (1877), 6 Ch. D. 264; 46 L. J. Ch. 857 - - - - -	82
Thames (Conservators) v. Hall (1868), L. R. 3 C. P. 415 - - -	215
Thellusson v. Rendlesham (1859), 7 H. L. Cas. 429; 28 L. J. Ch. 948- 236, 240, 248	38,
——— v. Woodford (1799), 4 Ves. 227 - - - - -	224, 235, 249
Thomas v. Daw (1866), L. R. 2 Ch. 1; 36 L. J. Ch. 201 - - -	22
Thompson v. Lack (1846), 3 C. B. 540; 16 L. J. C. P. 75 - - -	191
Thorley, In re, [1891] 2 Ch. 613; 60 L. J. Ch. 537 - - - -	203
Thorpe v. Adams (1871), L. R. 6 C. P. 125; 40 L. J. M. C. 52 -	215, 218, 221

	PAGE
Tilley <i>v.</i> Thomas (1867), L. R. 3 Ch. 61 - - - - -	52
Todd, <i>Ex parte</i> (1887), 19 Q. B. D. 186; 56 L. J. Q. B. 431 - -	194
Tomlinson <i>v.</i> Bullock (1879), 4 Q. B. D. 230; 48 L. J. M. C. 95 -	117
Tommey <i>v.</i> White (1850), 3 H. L. Cas. 49 - - - - -	23
Towns <i>v.</i> Wentworth (1858), 11 Moore, P. O. 526 - - - - -	247, 251
Trent <i>v.</i> Hanning (1806), 7 East, 97 - - - - -	257
Trimbey <i>v.</i> Vignier (1834), 1 Bing. N. C. 151 - - - - -	47
Trimble <i>v.</i> Hill (1879), 5 App. Cas. 342; 49 L. J. Q. B. 49 - -	112
Trotter <i>v.</i> Trotter (1828), 4 Bligh, N. S. 502 - - - - -	225
Trueman <i>v.</i> Lambert (1815), 4 M. & S. 238 - - - - -	120
Tuck & Sons <i>v.</i> Priester (1887), 19 Q. B. D. 629; 56 L. J. Q. B. 553 -	205
Turner and Skelton, <i>In re</i> (1879), 13 Ch. D. 130; 49 L. J. Ch. 114 -	20
—— <i>v.</i> Turner (1880), 14 Ch. D. 829 - - - - -	91
—— <i>v.</i> Winter (1787), 1 T. R. 602 - - - - -	98

U.

Union Bank <i>v.</i> Munster (1888), 37 Ch. D. 51; 57 L. J. Ch. 124 -	2
Union Steamship Co. of New Zealand <i>v.</i> Melbourne Harbour Trust Commissioners (1884), 9 App. Cas. 365; 53 L. J. P. C. 59 - -	123
Unwin <i>v.</i> Hanson, [1891] 2 Q. B. 115; 60 L. J. Q. B. 531 - -	186

V.

Vansittart <i>v.</i> Taylor (1855), 4 E. & B. 910; 24 L. J. Q. B. 198 -	192
Vauchamp <i>v.</i> Bell (1822), 6 Mad. 343 - - - - -	246
Venour's Settled Estates, <i>In re</i> (1876), 2 Ch. D. 522; 45 L. J. Ch. 409	125
Vera Cruz, The (No. 2) (1884), 9 P. D. 96; 53 L. J. P. C. 33 - -	20
Vince, <i>In re</i> , <i>Ex parte</i> Baxter, [1892] 2 Q. B. 478; 61 L. J. Q. B. 836-	58

W.

Wake <i>v.</i> Harrop (1861), 6 H. & N. 768; 30 L. J. Ex. 273 - -	43
—— <i>v.</i> Redfearn (1880), 43 L. T. 123 - - - - -	188
Walker <i>v.</i> Giles (1848), 6 C. B. 662; 18 L. J. C. P. 323 - - -	68
—— <i>v.</i> Hunter (1845), 2 C. B. 324; 15 L. J. C. P. 12 - - -	55
—— <i>v.</i> Richardson (1837), 2 M. & W. 882 - - - - -	120
Walpole (Lord) <i>v.</i> Earl of Cholmondeley (1797), 7 T. R. 138 -	9
Walsh <i>v.</i> Trevanion (1850), 15 Q. B. 733; 19 L. J. Q. B. 458 -	73
Walter <i>v.</i> Emmott (1885), 54 L. J. Ch. 1061 - - - - -	2
Walton, <i>Ex parte</i> (1881), 17 Ch. D. 746; 50 L. J. Ch. 657 -	39, 143, 144, 196
Warburton <i>v.</i> Loveland (1828), 1 Hudson & B. Irish Cas. 623 -	38, 236
Warde <i>v.</i> Warde (1852), 16 Beav. 103 - - - - -	81
Waring <i>v.</i> Currey (1873), 22 W. R. 150 - - - - -	232
Warkworth (The) (1883), 9 P. D. 20; 53 L. J. P. C. 4 - - -	159

TABLE OF CASES REFERRED TO.

xxxix

	PAGE
Warrington, <i>Ex parte</i> (1853), 3 D. M. & G. 159; 22 L. J. Bk. 33	- 220
Waterford's (Earl of) Claim (1832), 6 Cl. & F. 133	- 171
Waterlow v. Dobson (1857), 27 L. J. Q. B. 55	- 165
Watts, <i>In re</i> (1885), 29 Ch. D. 947; 55 L. J. Ch. 232	- 22, 121
Waugh v. Middleton (1853), 8 Ex. 352; 22 L. J. Ex. 109	- 38, 142
Wear (River) Commissioners v. Adamson (1877), 2 App. Cas. 743; 47 L. J. Q. B. 193	- 37, 128, 130, 153, 158, 159, 181
Webb v. Plummer (1819), 2 B. & Ald. 746	- 81
Webber v. Stanley (1864), 16 C. B. N. S. 698; 33 L. J. C. P. 217	- 254
Wells v. Wells (1874), L. R. 18 Eq. 504; 43 L. J. Ch. 681	- 246
West v. Downman (1880), 14 Ch. D. 111	- 198
Westbrook Trusts, <i>In re</i> , W. N. 1873, 167	- 3
West Derby Union (Guardians) v. Atcham Union (Guardians) (1889), 24 Q. B. D. 117; 6 Times Law Reports, 5; 59 L. J. M. C. 17	- 3, 24
Western Counties Ry. Co. v. Windsor, &c. Ry. Co. (1882), 7 App. Cas. 178; 51 L. J. P. C. 43	- 160
West Ham (Churchwardens) v. Fourth City Mutual Building Society, [1892] 1 Q. B. 654; 61 L. J. M. C. 128	- 221
——— (Overseers) v. Iles (1883), 8 App. Cas. 386; 52 L. J. Q. B. 650	- 121
Wheeldon v. Burrows (1879), 12 Ch. D. 31; 48 L. J. Ch. 853	- 21
Whicker v. Hume (1858), 7 H. L. Cas. 124; 28 L. J. Ch. 396	- 249
White v. Beeton (1861), 7 H. & N. 42; 30 L. J. Ex. 373	- 85
——— v. Tommey, <i>Ex parte</i> (1853), 4 H. L. Cas. 313	- 23
Whitehead v. Smithers (1877), 2 C. P. D. 553; 46 L. J. M. C. 234	- 207
Wiley, <i>Ex parte</i> (1883), 23 Ch. D. 118; 52 L. J. Ch. 546	- 16
Williams, <i>In re</i> (1887), 36 Ch. D. 573; 57 L. J. Ch. 264	- 218
——— v. Hathaway (1877), 6 Ch. D. 544	- 89
——— v. Newton (1845), 14 M. & W. 747; 15 L. J. Ex. 11	- 171
Willion v. Barkley (1561-2), Plow. 223	- 136
Willis v. Martin (1790), 4 T. R. 39	- 67
Wilson v. Eden (1848), 11 Beav. 289; 17 L. J. Ch. 459	- 244
——— v. Wilson (1854), 5 H. L. Cas. 40	- 23
Woodgate v. Knatchbull (1787), 2 T. R. 148	- 207
Woodin, <i>In re</i> , [1895] 2 Ch. 309; 64 L. J. Ch. 501	- 3
Woodward v. Cotton (1834), 1 Cr. M. & R. 44	- 175
Woolveridge v. Steward (1833), 1 Cr. & M. 644	- 77
Wright v. Hale (1860), 6 H. & N. 227; 30 L. J. Ex. 40	- 195, 196

Y.

Yarmouth (Corporation of) v. Simmons (1878), 10 Ch. D. 518; 47 L. J. Ch. 792	- 177, 220
Yarmouth v. France (1887), 19 Q. B. D. 647; 57 L. J. Q. B. 7	- 30
Yewens v. Noakes (1880), 6 Q. B. D. 530; 50 L. J. Q. B. 132	- 174
York & N. M. Ry. Co. v. The Queen (1853), 1 El. & B. 858; 22 L. J. Q. B. 225	- 181

	PAGE
York (Dean and Chapter of) <i>v.</i> Middleburgh (1828), 2 Y. & J. 196	- 198
Young <i>v.</i> Hughes (1859), 4 H. & N. 76; 28 L. J. Ex. 161	- - 192
—— <i>v.</i> Robertson (1862), 4 Macq. H. L. Cas. 314	- - 246
—— <i>v.</i> Smith (1865), L. R. 1 Eq. 180; 35 Beav. 87	- - 74

Z.

Zollverein, The (1856), 1 Sw. 96; 2 Jur. N. S. 429	- - - 107, 108
Zouch d. Woolston <i>v.</i> Woolston (1761), 2 Burr. 1142	- - - 5
—— <i>v.</i> Woolston (1761), 1 W. Bl. 281	- - - 104

TABLE OF STATUTES REFERRED TO.

Where possible, for the short titles, the Short Titles Act, 1892 (55 Vict. c. 10), has been used.

	PAGE
14 Edw. III. - - - - -	182
45 Edw. III. - - - - -	182
10 Rich. II. - - - - -	182
1 James I. c. 22 - - - - -	209
21 James I. c. 3 - - - - -	172
c. 16 - - - - -	171
22 & 23 Car. II. c. 9 - - - - -	170
9 Will. III. c. 8, s. 8 - - - - -	198
24 Geo. II. c. 23 (The Calendar (New Style) Act, 1750), s. 1 - - - - -	40
32 Geo. III. c. lxxiv. (The first Ramsgate Harbour Act, 1792) - - - - -	180
33 Geo. III. c. 13 (Act to prevent Acts of Parliament from taking effect from a time prior to the passing thereof) - - - - -	116, 210
54 Geo. III. c. 84 (Act for regulating the time for holding the Michaelmas Quarter Sessions in England) - - - - -	154
57 Geo. III. c. 99 - - - - -	161
6 Geo. IV. c. 125 (Pilotage Act, 1825) - - - - -	171
c. 133 - - - - -	209
9 Geo. IV. c. 61 (The Alehouse Act, 1828) - - - - -	124
5 & 6 Will. IV. c. 76 (The Municipal Corporations Act, 1835), s. 142 - - - - -	165
7 Will. IV. & 1 Vict. c. 26 (The Wills Act, 1837),	
s. 20 - - - - -	261
s. 22 - - - - -	261
s. 23 - - - - -	256
s. 24 - - - - -	231
s. 25 - - - - -	261
s. 26 - - - - -	258
s. 27 - - - - -	258
s. 28 - - - - -	258
s. 29 - - - - -	259
s. 30 - - - - -	259
s. 31 - - - - -	259
s. 32 - - - - -	260
s. 33 - - - - -	260
s. 34 - - - - -	261
1 & 2 Vict. c. 20 (The Queen Anne's Bounty Act, 1838), s. 22 - - - - -	78
5 & 6 Vict. c. 97 - - - - -	180

B.

d

	PAGE
8 & 9 Vict. c. 18 (The Lands Clauses Consolidation Act, 1845)	- 178
s. 132 - - - - -	- 78
c. 20 (The Railways Clauses Consolidation Act, 1845)	- 178
s. 46 - - - - -	- 154
9 & 10 Vict. c. 93 (Lord Campbell's Act)	- 222
10 Vict. c. 27 (The Harbour, Docks and Piers Clauses Act, 1847)	- 35
12 & 13 Vict. c. 106 (The Bankruptcy Law Consolidation Act, 1849)	- 192
13 & 14 Vict. c. 21 (Act for Shortening the Language used in Acts of Parliament (Lord Brougham's Act)),	
s. 1 - - - - -	210, 279
s. 2 - - - - -	- 125, 279
s. 3 - - - - -	113, 211
s. 4 - - - - -	137, 158, 279
s. 5 - - - - -	211, 280
s. 6 - - - - -	- 211, 280
s. 7 - - - - -	176, 280
s. 8 - - - - -	- 280
17 & 18 Vict. c. 36 (Bills of Sale Act, 1854)	- 140
c. 104 (Merchant Shipping Act, 1854)	- 216, 222
c. 120 (Merchant Shipping Repeal Act, 1854)	- 222
18 & 19 Vict. c. 134 (The Despatch of Business, Court of Chancery, Act, 1855)	- 218
25 & 26 Vict. c. 68 (The Fine Arts Copyright Act, 1862)	- 205
32 & 33 Vict. c. 14 (Revenue Act, 1869)	- 174
c. 46 (Hinde Palmer's Act, 1869)	- 122
35 & 36 Vict. c. 94 (The Licensing Act, 1872)	- 205
36 & 37 Vict. c. 66 (Supreme Court of Judicature Act, 1873),	
s. 25, sub-s. (7) - - - - -	- 53
sub-s. (8) - - - - -	- 199
c. 85 (Merchant Shipping Act, 1873)	- 153
37 & 38 Vict. c. 85 (Public Worship Regulation Act, 1874)	- 199
38 & 39 Vict. c. 40 (The Municipal Elections Act, 1875)	- 165
c. 77 (The Supreme Court of Judicature Act, 1875),	
s. 10 - - - - -	53
40 & 41 Vict. c. ccxxxv. (The Metropolitan Street Improvement Act, 1877)	- 148
41 & 42 Vict. c. 31 (The Bills of Sale Act, 1878), s. 8	- 173
43 & 44 Vict. c. 9 (Statutes (Definition of Time) Act, 1880), s. 1	- 41,
	53, 67, 164
43 & 44 Vict. c. 47 (The Ground Game Act, 1880), s. 3	- 193
44 & 45 Vict. c. 41 (The Conveyancing and Law of Property Act, 1881),	
s. 7 - - - - -	- 78
s. 7 (7) - - - - -	- 89
44 & 45 Vict. c. 61 (Sunday Closing (Wales) Act, 1881), s. 3	- 151
45 & 46 Vict. c. 61 (The Bills of Exchange Act, 1882)	- 168
50 & 51 Vict. c. 55 (The Sheriffs Act, 1887)	- 168

TABLE OF STATUTES REFERRED TO.

xliii

52 & 53 Vict. c. 63 (Interpretation Act, 1889),

	PAGE
s. 1	138, 267
s. 2	138, 267
s. 3	138, 139, 267
s. 4	139, 268
s. 5	139, 268
s. 6	139, 268
s. 7	139, 268
s. 8	126, 268
s. 9	176, 268
s. 10	210, 268
s. 11 (1)	211, 268
s. 11 (2)	211, 268
s. 12	269, 270
s. 13	270, 271
s. 14	271, 272
s. 15	272
s. 16	272, 273
s. 17	273
s. 18	273, 274
s. 19	274
s. 20	274
s. 21	274
s. 22	274
s. 23	274
s. 24	274
s. 25	274, 275
s. 26	275
s. 27	275
s. 28	275
s. 29	275
s. 30	275
s. 31	190, 275
s. 32	190, 276
s. 33	207, 276
s. 34	276
s. 35	113, 114, 276
s. 36	117, 118, 277
s. 37	118, 277
s. 38 (1)	223, 277
s. 38 (2)	213, 277
s. 39	176, 210, 277
s. 40	278
s. 41	113, 278
s. 42	278
s. 43	278
Schedule	278

55 Vict. c. 10 (Short Titles Act, 1892)

- 114

CARDINAL RULES OF LEGAL INTERPRETATION.

Part I.—CASE LAW.

SECTION I.

AUTHORITIES.

	PAGE
Text-Books of Living Authors	1
Reports—	
The Times	2
The Times Law Reports	2
Weekly Notes	3
Public Records, Reporters, and Ancient Authors	3
Some old Reports—	
Barnardiston	5
Blackstone	5
Coke	5
Keble	5
Leonard	6
Modern Cases	6
Plowden	6
Vernon	6
Judgments	6

Text-Books.

Text-books of living authors are not accepted as authorities in courts of justice.

“There is one notion often expressed with regard to works written or revised by authors on the Bench, which seems to me in part at least erroneous, the notion, I mean, that they possess a quasi-judicial authority. It is hardly enough remembered how different are the circumstances under which a book is written and a judgment pronounced, or how much the weight and value of the

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B

latter are due to the discussions at the bar which precede the judgment.”—*Fry on Specific Performance* (1881), 2nd ed. p. v.

“I will read from a book of my own, not because I have any undue confidence in my own work, but because in it I stated what I considered to be the law after a careful study of it—a more careful study than I could profess to give to it again at this moment.”—*Reg. v. Endacott*, C. C. C., Times, Nov. 2nd, 1887, Stephen, J.

“The argument, however, has been almost entirely rested upon one passage in the work of Lord Justice *Fry* on Specific Performance. It is to my mind much to be regretted, and it is a regret which I believe every judge on the bench shares, that text-books are more and more quoted in Court—I mean, of course, text-books by living authors—and some judges have gone so far as to say that they shall not be quoted. In the preface to this very book we have a warning against it by the learned author. I cannot forbear from quoting the words: ‘There is one notion often expressed with regard to works written or revised by authors on the bench, which seems to me in part at least erroneous; the notion, I mean, that they possess a quasi-judicial authority,’ and then he gives a reason which must commend itself to all students why that notion is erroneous.”—*Union Bank v. Munster* (1887), 37 Ch. D. 51, at p. 54; 57 L. J. Ch. 124, at p. 126, Kekewich, J.

Reports:

The Times.

“The report of this case [*Walter v. Head*] was allowed to be read, having been verified by an affidavit by the barrister who had acted as Times reporter.”—*Walter v. Emmott* (1885), 54 L. J. Ch. 1061 n., C. A.

The Times Law Reports.

“We have also been referred to *Rishdon v. White* (1888) [5 Times Rep. 59], a case only reported in a series of reports republished from a newspaper. A Divisional Court does appear there to have made an order under rule 7 for the inspection before the trial of documents in the hands of a firm of wharfingers who were not parties to the action. But I have learned from experience, as regards my own judgments, that the reports of decisions thus republished are not always accurate. I cannot, therefore, accept the case as an authority which precludes another Divisional Court from considering the question of the jurisdiction conferred by the rule.”—*Straker v.*

Reynolds (1889), 22 Q. B. D. 262, at p. 264; 58 L. J. Q. B. 180, Wills, J.

"We have said that we will accept the Times Law Reports, because they are reports by barristers who put their names to their reports."—*West Derby Poor Law Guardians v. Atcham Poor Law Guardians* (1889), 6 The Times Law Reports 5, at p. 6, Lord Esher, M. R.

Weekly Notes.

The Weekly Notes are not to be cited as an authority.

"The Lord Chancellor (Lord Selborne) has stated that cases in the Weekly Notes can only be cited as guides to discovering what has taken place in the Courts."—*Barter v. Dubeux* (1881), 7 Q. B. D. 413, at p. 414, note (2); 50 L. J. Q. B. 527, Bramwell, L. J.

"The cases in the Weekly Notes cannot be cited as authorities."—*Hornby v. Cardwell* (1881), 8 Q. B. D. 329, at p. 334, note (1); 51 L. J. Q. B. 89, Jessel, M. R.

"We do not allow the Weekly Notes to be read as authority."—*Pooley's Trustee v. Whetham*, No. 2 (1886), 33 Ch. D. 76, at p. 77; 56 L. J. Ch. 41, Cotton, L. J.

"I have been asked to say that the persons who would have been his next of kin in 1880 are entitled to the fund, and *In re Westbrook Trusts*, W. N. 1873, p. 167, is cited as an authority for that conclusion. A note of that kind cannot be relied on as a sufficiently accurate report of the case, and the Weekly Notes are not intended for citation. But I have often derived great assistance from them, and they are useful in putting one on the track for further inquiry."—*In re Rhodes* (1887), 36 Ch. D. 586, at p. 589; 56 L. J. Ch. 825, at p. 826, North, J.

"Now I, speaking for myself, venture to protest against a case being treated as authority which is reported only very briefly in the Weekly Notes, where we cannot tell from the report what the argument was, and cannot tell what the reasons of the judges were, and where we do not even know distinctly what the provisions of the will were."—*In re Woodin*, [1895] 2 Ch. 309, at p. 318; 64 L. J. Ch. 501, at p. 505, Kay, L. J.

Public Records, Reporters, and Ancient Authors.

"The law, and the opinion of the judge, are not always convertible terms, or one and the same thing; since it sometimes may happen

that the judge may *mistake* the law. Upon the whole, however, we may take it as a general rule, 'that the decisions of courts of justice are the evidence of what is common law': in the same manner as, in the civil law, what the emperor had once determined was to serve for a guide for the future.

"The decisions, therefore, of courts are held in the highest regard, and are not only preserved as authentic records in the treasuries of the several courts, but are handed out to public view in the numerous volumes of *reports* which furnish the lawyer's library.

"These reports are histories of the several cases, with a short summary of the proceedings, which are preserved at large in the record; the arguments on both sides, and the reasons the Court gave for its judgment; taken down in short notes by persons present at the determination. And these serve as indexes to, and also to explain, the records; which always, in matters of consequence and nicety, the judges direct to be searched. The reports are extant in a regular series from the reign of King Edward the Second inclusive; and from his time to that of Henry the Eighth were taken by the prothonotaries, or chief scribes of the court, at the expense of the Crown, and published *annually*, whence they are known under the denomination of *Year-Books*. And it is much to be wished that this beneficial custom had, under proper regulation, been continued to this day: for, though King James the First, at the instance of Lord Bacon, appointed two reporters with a handsome stipend for this purpose, yet that wise institution was soon neglected, and from the reign of Henry the Eighth to the present time this task has been executed by many private and contemporary hands, who, sometimes through haste and inaccuracy, sometimes through mistake and want of skill, have published very crude and imperfect (perhaps contradictory) accounts of one and the same determination.

"Besides these reporters, there are also other authors, to whom great veneration and respect is paid by the students of the common law. Such are Glanvil and Bracton, Britton and Fleta, Hengham and Littleton, Statham, Brooke, Fitzherbert and Staundforde, with some others of ancient date, whose treatises are cited as authority, and are evidence that cases have formerly happened in which such and such points were determined, which are now become settled and first principles."—1 *Bl. Com.* pp. 71, 72.

Some Old Reports.

Barnardiston.
Blackstone.
Coke.
Keble.

Leonard.
Modern.
Plowden.
Vernon.

[N.B.—It would take up too much space to give a full account of the accuracy or inaccuracy of all the old reports. It must suffice here to mention a few judicial criticisms on some of them. The reader is referred to “The Reporters,” by Mr. J. W. Wallace, of Philadelphia, 3rd edition, revised (1855), for further information on this subject.—AUTHOR.]

Barnardiston (1726—1735).

“Lord *Mansfield* absolutely forbid the citing that book [Barnardiston’s Rep. in Chancery]: for it would be only misleading students to put them upon reading it. He said it was marvellous, however, to those who knew the serjeant and his manner of taking notes, that he should so often *stumble* upon what was right; but yet, that there was not one case in his book which was so throughout.”—*Zouch* d. *Woolston* v. *Woolston* (1761), 2 Burr. 1142 (marginal note).

Blackstone, W. (1746—1780).

“Mr. Justice *Blackstone*’s reports are not very accurate.”—*Hassells* v. *Simpson* (1781), 1 Doug. 89, at p. 93, Lord Mansfield.

Coke (1572—1616).

“Some of the most valuable of the ancient reports are those published by Lord Chief Justice Coke, a man of infinite learning in his profession, though not a little infected with the pedantry and quaintness of the times he lived in, which appear strongly in all his works. However, his writings are so highly esteemed, that they are generally cited without the author’s name.”—1 *Bl. Com.* p. 72.

Keble (1661—1679).

“It must, however, be admitted that Keble is of no high repute as an accurate reporter; and the Court would be slow to act on a case in that book, if it were unsupported by others.”—*Farrall* v. *Hilditch* (1859), 5 C. B. N. S. 840, at p. 853; 28 L. J. C. P. 221, at p. 223; Williams J., delivering the judgment of the Court.

“With respect to the authority of Keble, we cannot refrain from referring to the highly valuable and interesting work of Mr. J. W. Wallace, of Philadelphia, “The Reporters,” 3rd ed. pp. 207, 208, from which it appears that more is to be said for the

character of this reporter, as a 'tolerable historian of the law,' than, from the remarks made upon him from time to time, might have been supposed."—*Farrall v. Hilditch* (1859), 5 C. B. N. S. 840, at p. 855; 28 L. J. C. P. 221, at p. 224, Williams, J., delivering the judgment of the Court.

Leonard (1540—1615).

"Now Leonard is well known to have been a very accurate reporter."—*Duke of Sutherland v. Heathcote*, [1892] 1 Ch. 475, at p. 485; 61 L. J. Ch. 248, at p. 251, *per cur.*

Modern Cases in Law and Equity (1669—1732).

"A miserably bad book, entitled 'Modern Cases in Law and Equity.'"—1 Burr. 386 (marginal note).

"The Court treated that book with the contempt it deserves; and they all agreed that the case was wrong (*sic*) stated *there*. (I mean the old edition of that book.)"—3 Burr. 1326 (marginal note).

"12 Mod. is not a book of any authority."—*The King v. Lyme Regis* (1779), Doug. 80, at p. 83, Buller, J.

Plowden (1550—1580).

"Most accurate of all reporters."—Harg. Co. Litt. 23.

Vernon (1681—1720).

"I am very sorry to find that the reports of so able a man should be so imperfect, and come out in this manner."—*Boycot v. Cotton* (1738), 1 Atk. 552, at p. 556, Hardwicke, L. C.

Judgments.

[N.B.—Some judgments are reported by reporters without any revision by the Court who pronounced such judgments; again, judges often write their own judgments, and these are printed in the report. Perhaps the highest praise meted out to any judge who wrote his own judgments is that to Lord Ellenborough by Park, J., in the case next cited. —AUTHOR.]

"I think I may venture to state, without fear of contradiction, that, if ever there existed a judge who luminously and perspicuously stated the grounds of a written judgment, what he did, and what he did not rely upon, that noble, very learned, and excellent person [Lord Ellenborough], was the man; and, therefore, it is impossible ever to mistake his meaning, though you may happen not to come to the same conclusion."—*Nind v. Marshall* (1819), 1 B. & B. 319, at p. 344, Park, J.

SECTION II.

DECISIONS.

	PAGE
Reason and Spirit of Decisions	7
Use of Decisions	7
When useful	8
Principles of Decisions	9
Rules of Law against Principle	10
Consistent Decisions—Contradictory Decisions	10
Long-standing Decisions	10
Dicta contained in Decisions	15
Decisions on Identical Words or Similar Grounds	17
Decisions and Judgments affirmed on Different Grounds	18

Decisions are the evidence of what is common law.

“Upon the whole, however, we may take it as a general rule, ‘that the decisions of courts of justice are the evidence of what is common law :’ in the same manner as, in the civil law, what the emperor had once determined was to serve for a guide for the future.”—1 *Bl. Com.* p. 71.

Reason and Spirit of Decisions.

The reason and spirit of cases make law.

“The reason and spirit of cases make law; not the letter of particular precedents.”—*Fisher v. Prince* (1763), 3 *Burr.* 1363, at p. 1364, Lord Mansfield.

Use of Decisions.

The use of cases is the establishment of some principle which the Court can follow out in deciding the case before it.

“The only use of authorities, or decided cases, is the establishment of some principle which the judge can follow out in deciding the case before him. There is, perhaps, nothing more important in our law than that great respect for the authority of decided cases which is shown by our tribunals. Were it not for that our law would be in a most distressing state of uncertainty; and so strong has that been my view, that when a case had decided a principle, although I myself do not concur in it, and although it has been only a decision of a tribunal of co-ordinate jurisdiction, I have felt bound to follow it when it is of respectable age and has been used by lawyers as settling the law, leaving to the Appellate Court to say that case is wrongly decided, if the

Appellate Court should so think.”—*In re Hallett's Estate* (1879), 13 Ch. D. 696, at p. 712; 49 L. J. Ch. 415, at p. 419, Jessel, M. R.

When Useful.

Decisions are useful when they lay down canons or rules of construction, and may be valuable guides where they put an interpretation on common forms.

“For myself, I am prepared to look at the instrument such as it is; to see the language that is used in it; to look at the whole of the document, and not to part of it; and, having looked at the whole of the document, to see (if I can) through the instrument what was the mind of the testator. Those are general principles for the construction of all instruments—and to that extent it may be said that they are canons of construction. But the moment I depart from those general canons of construction applicable to all instruments—and I am overwhelmed with authorities about what particular judges have thought about other particular instruments, and whether in this or that particular instrument the judge has been sufficiently satisfied that such and such was the meaning of the testator—I confess myself to be in a hopeless state of confusion. In the first place, I do not know what mental thermometer there is to ascertain what exact degree of certainty is to be obtained. If there is sufficient to establish the meaning, why is it sufficient? And what does that mean? It must mean sufficient in the mind of the particular tribunal that has to decide. That there are particular phrases and particular sets of phrases to which the law would attach a particular meaning is true; and when unqualified and unexplained by anything else those words are found in an instrument, of course you must give to those words or to those phrases the meaning which the law has attached to them, and it would be unreasonable if you did not; because you must suppose, in the absence of any other explanation, that the person who has used those phrases, or used the particular word, has used the phrase or the word in the sense which has hitherto been attached to it by the law, and there is no reason to go out of what you might call the ordinary and *prima facie* meaning of such expression.”—*In re Jodrell* (1890), 44 Ch. D. 590, at p. 605; 59 L. J. Ch. 538, at p. 542, Lord Halsbury, L. C.

“In truth, in this case, as in many others, the difficulty arises when you look away from the document which you have to construe—when you look into cases (that is to say) which have been

decided on other documents more or less like the one before you. I do not propose to deal with decided cases at all. It may be that there were expressions in the documents then before the Court which made the judges come to conclusions which I cannot arrive at when I come to look at the will and codicils with which I have to deal. I do not consider that a decision which is more or less at variance with other cases is wrong because it is so at variance. Cases of construction are useful when they lay down canons or rules of construction, and they are useful when they put an interpretation on common forms. Whether in deeds, wills, or mercantile instruments, they may be valuable guides.”—*Ibid.*, Ch. D. at p. 609; L. J. Ch. at p. 544, Lindley, L. J.

Principles of Decisions.

The only thing in a decision binding as an authority is the right principle upon which the case was decided, and not the application of such principle.

“All the cases that have been cited profess to proceed on that ground, and if the rule be established, it is not impaired because a judge at Nisi Prius, meaning to be guided by it, mistakes the application of the rule to the particular case before him. Without minutely examining all the cases, or saying whether I do or do not agree with them, it is sufficient for me to abide by the principle established by them; the principle is the thing which we are to extract from cases, and to apply it in the decision of other cases.”—*Lord Walpole v. Earl of Cholmondeley* (1797), 7 T. R. 138, at p. 148, Lord Kenyon, C. J.

“With respect to the cases which have been cited, it is to be observed, that where a general principle for the construction of an instrument is once laid down, the Court will not be restrained from making their own application of that principle, because there are cases in which it may have been applied in a different manner.”—*Browning v. Wright* (1799), 2 B. & P. 13, at p. 24, Lord Eldon, C. J.

“Now, I have often said, and I repeat it, that the only thing in a judge’s decision binding as an authority upon a subsequent judge is the principle upon which the case was decided; but it is not sufficient that the case should have been decided on a principle if that principle is not itself a right principle, or one not applicable to the case.”—*Osborne v. Rowlett* (1880), 13 Ch. D. 774, at p. 785; 49 L. J. Ch. 310, at p. 313, Jessel, M. R.

Rule of Law against Principle.

A rule of law against principle to be binding on a court of co-ordinate jurisdiction must have passed into a binding rule of law.

“Now, when a rule of law which is against principle is alleged to be established, there are two points to be considered; first of all, was any such rule of law ever laid down by any judge? That is the first point to be decided; and secondly, if it was so laid down, has it passed into a binding rule of law?—that is, has it been so recognized and dealt with by subsequent judges as to prevent a judge of a tribunal of co-ordinate jurisdiction from saying that the decision is contrary to the course of law, and is not binding upon him?”—*Henty v. Wrey* (1882), 21 Ch. D. 332, at p. 340, Jessel, M. R.

Consistent Decisions—Contradictory Decisions.

Consistent decisions are binding on the Court, but contradictory decisions are to be considered by the Court.

“If these (decisions) are consistent we are bound by them, even although our own minds do not approve the principles on which they rest. There would otherwise be no certain rule which could be known to those who are required to conform to the law.

“If the decisions are contradictory, we are to consider the reasons given for them by those who pronounced them.

“If our predecessors have given no reasons for their judgment, or the reasons given for conflicting judgments are equally unsatisfactory, we are to put that construction on the statutes which our own unfettered judgment induces us to think the legislature intended should be put on them.”—*Newton v. Cowie* (1827), 4 Bing. 234, at p. 241, Best, C. J.

Long-standing Decisions.

The Courts should be careful not to overrule decisions which, not being manifestly erroneous and mischievous, have stood for some time unchallenged, and from their nature and the effect which they may reasonably be supposed to have produced upon the conduct of a large portion of the community, as well as of Parliament itself, in matters affecting rights of property, may fairly be treated as having passed into the category of established and recognised law.

“Assuming that a judge thinks the construction to be clear one

way, but a series of authorities is produced, being decisions of judges of co-ordinate jurisdiction, the other way, there must be a time at which the judge is bound by them. If one authority were produced to me, and my own opinion were the other way, I would not follow that authority: but if the authorities were numerous, I admit that I must be bound. On that point the case of *In re Newman's Settled Estates* (1874), 43 L. J. Ch. 702; L. R. 9 Ch. 681, is an authority."—*In re Bethlem Hospital* (1875), L. R. 19 Eq. 457, at p. 459; 44 L. J. Ch. 406, at p. 407, Jessel, M. R.

"Viewed simply as the decision of a Court of first instance, the authority of this case [*Reg. v. Wycombe Rail. Co.* (1867), L. R. 2 Q. B. 310; 36 L. J. Q. B. 121], notwithstanding the respect due to the judges who decided it, is not binding upon us; but viewed in its character and practical results, it is one of a class of decisions which acquire a weight and effect beyond that which attaches to the relative position of the Court from which they proceed. It constitutes an authority which, after it has stood for so long a period unchallenged, should not, in the interests of public convenience, and having regard to the protection of private rights, be overruled by this Court except upon very special considerations. For twelve years and upwards the case has continued unshaken by any judicial decision or criticism as an authoritative exposition of the meaning of sect. 16 of the Railways Clauses Consolidation Act, 1845, in respect of the matter here in dispute. During such period hundreds of special Acts of Parliament have been passed sanctioning the construction of lines of railway and the consequent interference with private rights, and incorporating for that purpose the provisions of the general Act. Promoters must have sought their powers, landowners must have regulated their course of action, and parliamentary committees must have given their sanction to the projects submitted to them upon the faith and footing of a limit to the powers sought and conceded being found in the provisions of the general Act as interpreted from time to time by judicial decisions. If so, it is to be presumed that the limit put upon the powers of a railway company in regard to the diversions of roads and rivers by the decision of the Court of Queen's Bench in *Reg. v. Wycombe Rail. Co.* must have exercised a material influence upon the relations of persons owning land proposed to be affected by special railway legislation and the promoters of that legislation. As a matter of practical experience, we cannot doubt that landowners would be advised as to these rights and the limits of the promoters'

powers upon the assumption of the correctness of the law laid down after full argument and in clear and distinct terms by a Court so constituted as was the Court of Queen's Bench in the case referred to, and whose decision, although open to appeal, was not appealed from; and we cannot doubt also that parliamentary committees, in considering any question of protection to landowners in relation to rivers and roads, would be invited to proceed, and would proceed, upon the same assumption. While, therefore, in considering the rights of private parties in cases like the present, the Courts are, on the one hand, bound—as it has been held by the highest authority—to disregard any representations, whether in the shape of deposited plans or otherwise, made by the promoters other than such as are embodied in the Act of Parliament, they ought, on the other hand, to be careful not lightly to disregard representations which may reasonably be said to be embodied in a special Act which incorporates the general Act after a particular interpretation of it has received judicial sanction, and contains no provisions from which can be collected any intention on the part of the legislature, or those who sought its interposition, to question or impugn the correctness of that interpretation. To put the matter in another shape, the Courts should be careful not to overrule decisions which, not being manifestly erroneous and mischievous, have stood for some time unchallenged, and from their nature and effect which they may reasonably be supposed to have produced upon the conduct of a large portion of the community, as well as of Parliament itself, in matters affecting the rights of property, may fairly be treated as having passed into the category of established and recognised law.”—*Pugh v. Golden Valley Rail. Co.* (1880), 15 Ch. D. 330, at p. 334; 49 L. J. Ch. 721, at p. 723, *per cur.* James, Cotton, and Thesiger, L. JJ.

Old cases contrary to the principles of the general law should be overruled unless they have made the law on a particular subject.

“There is, however, the case which has been referred to, decided by the full Court of Common Pleas in 1843, *Jarmain v. Hooper*, 6 Man. & G. 827. That case is not technically binding on the Court of Appeal, but whether rightly or wrongly decided, it was decided nearly forty years ago, and has never been questioned since. It has been frequently cited and commented on, and has

got into the text-books, and the Court of Appeal ought not now to disturb it. There are two classes of cases which must be distinguished. Where an old case is contrary to the principles of the general law, the Court of Appeal ought not to shrink from overruling it even after a considerable lapse of time. But when an old decided case has made the law on a particular subject, the Court of Appeal ought not to interfere with it, because people have considered it as establishing the law and have acted upon it."—*Smith v. Keal* (1882), 9 Q. B. D. 340, at pp. 351, 352, Jessel, M. R. [cited by Lord Esher, M. R., in *Morris v. Salberg* (1889), 22 Q. B. D. 614, at p. 619; 58 L. J. Q. B. 275, at p. 277.]

"We have, it is true, the power of reviewing that decision [*Re Rouse and Meier* (1871), L. R. 6 C. P. 212; 40 L. J. C. P. 145]; but where there is a decision as that is on the course of procedure which has been made more than twelve years ago, and which therefore must necessarily have been frequently acted on during that time, and no one has gone to the Legislature to have it altered, this Court of Appeal, even if it differed from such decision, would not now be disposed to overrule it."—*Fraser v. Ehrensperger* (1883), 12 Q. B. D. 310, at p. 318; 53 L. J. Q. B. 73, at p. 76, Brett, M. R.

"The contract is one which is daily contained in conditions of sale by auction, and when there is with respect to it the decision of such a case as *Bos v. Helsham* [(1866), L. R. 2 Ex. 72; 36 L. J. Ex. 20], which having been on demurrer could easily have been brought by appeal to the Exchequer Chamber, and ultimately to the House of Lords, and yet one finds it unchallenged until now, after a lapse of eighteen years; and when also one finds that it was preceded in 1830 by the case of *Cann v. Cann* [3 Sim. 447], in which a deliberate statement of the law was made, on which the case of *Bos v. Helsham* was founded, one cannot but say that this Court, according to what has been the universal practice, even of a Court of Error, would decide now in the same way, even though it would not have come originally to the same decision. All the sales by auction which have occurred since those decisions must have taken place on the law which had been so published, and therefore it would be very wrong now for this Court to overrule those decisions."—*Palmer v. Johnson* (1884), 13 Q. B. D. 351, at p. 354; 53 L. J. Q. B. 348, at p. 349, Brett, M. R.

"If it were not for the previous decisions, one might have thought that such condition was intended only to cover the

interval before the formal deed of conveyance, but when, in dealing with such a condition as this, which is so frequent on the occasion of the sale of property, you find that the Courts have put a particular construction upon it which has been unchallenged for many years, it would be unjust to alter it, and I do not think that it is now open to this Court to do so after the case of *Bos v. Helsham* [(1866), L. R. 2 Ex. 72; 36 L. J. Ex. 20], which followed *Cann v. Cann* [3 Sim. 447], decided in 1830. I must say that I do not think that the Vice-Chancellor Malins was justified, under the circumstances, in differing from those two previous cases.”—*Palmer v. Johnson* (1884), 13 Q. B. D. 351, at p. 357; 53 L. J. Q. B. 348, at p. 351, Bowen, L. J.

“I am bound to state that I agree with what has been said by the other members of this Court as to its not being desirable to interfere with decisions pronounced so long ago; since it is impossible to deny that during the fifty-four years which have elapsed numerous contracts must have been made, and moneys paid, on the footing of the law as established by *Cann v. Cann*, and which law I, for one, am not inclined to alter.”—*Ibid.*, at p. 358; L. J. at p. 351, Fry, L. J.

“It is a wholesome rule that has often been laid down, that when a well-known document has been in constant use for a number of years, the Court, in construing it, should not break away from previous decisions, even if in the first instance they would have taken a different view, because all the documents made after the meaning of one has been judicially determined are taken to have been made on the faith of the rule so laid down.” *Dunlop and Sons v. Balfour, Williamson & Co.*, [1892] 1 Q. B. 507, at p. 518; 61 L. J. Q. B. 354, at p. 360, Lord Esher, M. R.

“Where there is a decision which has stood for more than two hundred years in respect of a subject-matter constantly arising in practice, the Court does not overrule it unless absolutely obliged to do so; more especially, when the law as laid down by that decision has been handed down for a long period through a series of text-books by careful writers, and the general principle on which the decision was founded has often been recognized by eminent judges. In such a case, even if the Court did not agree with the decision, it would not overrule it.”—*Hodder v. Williams*, [1895] 2 Q. B. 663, at p. 665, Lord Esher, M. R.

If a decision has not stood wholly unquestioned, it need not be followed.

"The decision in *Labouchere v. Dawson* [(1872), L. R. 13 Eq. 322; 41 L. J. Ch. 427] has not stood wholly unquestioned, and I do not think that we are bound to follow it merely because it has stood for twelve years without being authoritatively overruled."—*Pearson v. Pearson* (1884), 27 Ch. D. 145, at p. 154; 54 L. J. Ch. 32, at p. 40, Baggallay, L. J.

Long-standing decisions as to the jurisdiction of an inferior Court.

The rule as to not overruling decisions of many years' standing is not applicable where the decision is one as to the jurisdiction of an inferior Court.

"I do not think that the rule is applicable which often governs us in not overruling decisions of many years' standing, on which persons may often have acted in making contracts, or otherwise. Where the decision is really one as to the jurisdiction of another Court there seems to me to be no reason why, at any distance of time, a superior Court may not overrule it."—*The Queen v. Edwards* (1884), 13 Q. B. D. 586, at p. 590; 53 L. J. M. C. 149, at p. 151, Brett, L. J.

Dicta contained in Decisions.

Old Dicta—Modern Dicta.

Where a dictum of law has been accepted, and is likely to have affected divers contracts and dealings between man and man, or has put a construction on an Act of Parliament and thus made a law which men follow in their daily dealings, it is binding.

"I perfectly admit that, although there has been no such judicial decision, yet if I could find that this had been the accepted *dictum* of law, and that it was likely to have affected divers contracts and dealings between man and man, and that by not following it I should be disturbing anything which had been done in former times over and over again on the faith of the *dictum*, I should feel myself bound by it, and I should decline to decide in opposition to it."—*In re Rosher* (1884), 26 Ch. D. 801, at p. 821; 53 L. J. Ch. 722, at p. 731, Pearson, J.

Dicta of modern judges should not have much attention paid to them.

Dicta not binding should be examined into.

"Speaking for myself, I do not pay much attention to the *dicta* of modern judges, as I consider it my duty to decide for myself. This, of course, does not apply to decisions of modern judges, nor to old recognized *dicta* by eminent judges."—*Quilter v. Heatly* (1883), 23 Ch. D. 42, at p. 49, Jessel, M. R.

"I never allow my construction of a plain enactment to be biassed in the slightest degree by any number of judicial decisions or *dicta* as to its meaning, when those decisions or *dicta* are not actually binding on me. I read the Act for myself. If I think it clear, I express my opinion about its meaning as I consider I am bound to do. Of course, if other judges have expressed different views as to the construction, and their decisions are binding on this Court, this Court has simply to bow and submit, whatever its own opinion may be. But when there is no such binding decision, in my view a judge ought not to allow himself to be biassed in the construction of a plain Act of Parliament (for it appears to me to be plain) by any number of *dicta* or decisions which are not binding on him. The judge ought, with all due respect, to examine into them, but he must not allow any number of *dicta*, or even decisions which are not binding on him, to affect his judgment except in one peculiar case. That case is peculiar, and, therefore, I will mention it. Where a series of decisions of inferior Courts have put a construction on an Act of Parliament, and have thus made a law which men follow in their daily dealings, it has been held by the House of Lords, that it is better to adhere to the course of the decisions than to reverse them, because of the mischief which would result from such a proceeding. Of course that requires two things, antiquity of decision, and the practice of mankind in conducting their affairs."—*Ex parte Willey, In re Wright* (1883), 23 Ch. D. 118, at p. 127; 52 L. J. Ch. 546, at p. 548, Jessel, M. R.

"Sir George Jessel has pointed out in *Quilter v. Heatly* (1883), 23 Ch. D. 42, at p. 49, and in *Ex parte Willey* (1883), 23 Ch. D. 118, at p. 128, what I think everyone must agree in—the inexpediency of deciding any case upon the authority of the *dicta* of modern judges. There are old *dicta* of great judges, which have been followed by many decisions and have become maxims of the law, but modern *dicta* are but attempts to embody, in a short form,

the result of decisions on statutes which any lawyer can examine for himself.”—*Dashwood v. Magniac*, [1891] 3 Ch. 306, at p. 376; 60 L. J. Ch. 809, at p. 826, Kay, L. J.

Decisions on Identical Words or Similar Grounds.

Decisions on the construction of instruments, if the words are identical, are not strictly binding.

Decisions on the construction of instruments if the words are only similar or somewhat similar are not binding.

On a question of construction even the decision of the Appeal Court on similar grounds is not binding on another Court and much less on a Court of equal jurisdiction.

“No judge objects more than I do to referring to authorities merely for the purpose of ascertaining the construction of a document, that is to say, I think it is the duty of a judge to ascertain the construction of the instrument before him, and not to refer to the construction put by another judge upon an instrument perhaps similar, but not the same. The only result of referring to authorities for that purpose is confusion and error, in this way, that if you look at a similar instrument and say that a certain construction was put upon it, and that it differs only to such a slight degree from the document before you, that you do not think the difference sufficient to alter the construction, you miss the real point of the case, which is to ascertain the meaning of the instrument before you. It may be quite true that in your opinion the difference between the two instruments is not sufficient to alter the construction, but at the same time the judge who decided on that other instrument may have thought that that very difference would be sufficient to alter the interpretation of that instrument. You have, in fact, no guide whatever; and the result, especially in some cases of wills, has been remarkable. There is, first, document A., and a judge formed an opinion as to its construction. Then came document B., and some other judge has said that it differs very little from document A.—not sufficient to alter the construction—therefore he construes it in the same way. Then comes document C., and the judge then compares it with document B., and says it differs very little and therefore he shall construe it in the same way. And so the construction has gone on until we find a document which is in totally different terms from the first, and which no human being would think of construing in the same

B.

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manner, but which has, by this process, come to be construed in the same manner.”—*Aspden v. Seddon* (1875), L. R. 10 Ch. 394, at p. 397 note (1); 44 L. J. Ch. 359, at p. 363, Jessel, M. R.

“Nothing is better settled than that the construction put upon an instrument by a Court of law or equity is not binding on another Court of law or equity, even of inferior jurisdiction, as regards the construction of an instrument couched in somewhat similar language.”—*In re New Callao* (1882), 22 Ch. D. 484, at p. 488; 52 L. J. Ch. 283, at p. 285, Jessel, M. R.

“Nothing is better known than that on a question of mere construction even the decision of the Appeal Court on similar grounds is not binding on another Court, and much less on a Court of equal jurisdiction. As regards the construction of the instrument, even if there are the identical words, although we follow them (decisions), they are not strictly binding; but on similar words they are not binding.”—*Hack v. London Provident Building Society* (1883), 23 Ch. D. 103, at p. 111; 52 L. J. Ch. 541, at p. 542, Jessel, M. R.

Decisions and Judgments affirmed on Different Grounds.

A judgment affirmed on different grounds from those of the Court below, renders the judgment of the Court below no longer binding.

A decision affirmed on different grounds is binding, but not so the reasons given for it.

“The decision of the Court of Appeal was affirmed, but not the judgment, and that is a very important distinction. When the House of Lords affirm a decision on different grounds from those of the Court below, it is evidence, in fact proof, to those who know the practice of the House of Lords, that they do not agree with those grounds. Therefore a judgment so affirmed, so far from leaving the judgment of the Court of Appeal intact, shows the contrary, and that you are no longer bound by it. The mere affirmance of the decision is quite a different thing. You are bound by the decision but not by the reasons given for it.”—*Hack v. London Provident Building Society* (1883), 23 Ch. D. 103, at p. 112; 52 L. J. Ch. 541, at p. 542, Jessel, M. R.

SECTION III.

DECISIONS OF COURTS.

	PAGE
Decisions of Courts of Co-ordinate or Concurrent Jurisdiction ...	19
Lord Chancellor's Court ...	21
House of Lords—	
Independent Reasons of Lords ...	22
Irreconcilable Cases of House of Lords ...	24
Privy Council ...	25
Ecclesiastical Courts ...	26
Railway Commissioners ...	27
Irish Courts ...	27
Scotch Courts ...	27
American Courts ...	29

Decisions of Courts of Co-ordinate or Concurrent Jurisdiction.

By the comity or courtesy of Courts, Courts of co-ordinate or concurrent jurisdiction follow one another.

On the grounds of judicial comity a Court bows to its own decisions.

If two cases in the same Court or in Courts of co-ordinate jurisdiction are in conflict, a Court must say with which of them it agrees.

When a Court is equally divided, if the case comes before it again, it will exercise an independent opinion and abide by one of the two views.

When a Court is equally divided, its judgment is not binding on a Court of co-ordinate jurisdiction.

“The rule is this : that wherever there is a decision of a Court of concurrent jurisdiction, the other Courts will adopt that as the basis of their decision, provided it can be appealed from. If it cannot be appealed from, then they will exercise their own judgment.”—*Leech v. The North Staffordshire Rail. Co.* (1860), 29 L. J. M. C. 150, at p. 155, Pollock, C. B.

“That is, where they think the judgment of the other Court was clearly wrong; not where it is a doubtful matter.”—*Ibid.*, Martin, B.

“That [the Courts of Queen’s Bench, Common Pleas and Exchequer following each other’s decisions] was a matter of courtesy. The Vice-Chancellors did not consider themselves bound by each other’s decisions. I have differed frequently from Courts of co-ordinate

jurisdiction.”—*Gathercole v. Smith* (1881), 44 L. T. 439, at p. 440, Jessel, M. R.

“That case [*London and North Western Rail. Co. v. Buckmaster* (1874), L. R. 10 Q. B. 70; in Ex. Ch. 444; 44 L. J. M. C. 180] is not an authority which is binding upon us, because in the Exchequer Chamber, which was a Court of co-ordinate jurisdiction with ourselves, the judges were equally divided, and therefore the judgment of the Queen’s Bench stood affirmed.”—*Smith v. Lambeth Assessment Committee* (1882), 10 Q. B. D. 327, at p. 328; 52 L. J. M. C. 1, Brett, L. J.

“This raises the question whether any Court is bound by a decision of its own, which decision was grounded on the fact that the members of the Court present were equally divided. It was the custom for each of the Courts in Westminster Hall to hold itself bound by a previous decision of itself or of a Court of co-ordinate jurisdiction. But there is no statute or common law rule by which one Court is bound to abide by the decision of another of equal rank, it does so simply from what may be called the comity of judges. In the same way, there is no common law or statutory rule to oblige a Court of law to bow to its own decision, it does so again on the grounds of judicial comity. But when a Court is equally divided this comity does not exist, for there is no authority of the Court as such, and those who follow must choose one of two adverse opinions. And if the books are examined, I have no doubt it would be found, if authority there be, that when a Court is equally divided, if the case comes before it again, it will exercise an independent opinion and abide by one of the two views. The case may be different as regards the House of Lords, since it is the ultimate Court of Appeal, for if it is otherwise there exists an uncertainty as to the law.”—*The Vera Cruz* (No. 2) (1884), 9 P. D. 96, at p. 98; 53 L. J. P. 33, at p. 39, Brett, M. R.

“A Court of law is not justified, according to the comity of our Courts, in overruling the decision of another Court of co-ordinate jurisdiction, and therefore the Vice-Chancellor ought not to have differed from those former decisions. That is the rule which Jessel, M. R., adopted in *In re Turner and Skelton* [(1879), 13 Ch. D. 130; 49 L. J. Ch. 114].”—*Palmer v. Johnson* (1884), 13 Q. B. D. 351, at p. 355; 53 L. J. Q. B. 348, at p. 350, Brett, M. R.

“The Court ought never to come to the conclusion that two cases in the same Court, or in Courts of co-ordinate jurisdiction, are in conflict, unless it is obliged to. I agree that if two cases are in conflict the Court must say with which of them it agrees.”—

Duke of Devonshire v. O'Connor (1890), 24 Q. B. D. 468, at p. 473 ; 59 L. J. Q. B. 206, at p. 209, Lord Esher, M. R.

Lord Chancellor's Court.

Decisions of a Lord Chancellor, sitting alone, are decisions of a Superior Court of Appeal, but are not to be taken as decisions of the Court of Appeal. They were liable to be reheard and to be overruled by the Lord Chancellor himself or his successor.

"For us to reverse the judgment of a Lord Chancellor would require a tremendous case—a case of a clear error."—*Wheeldon v. Burrows* (1879), 12 Ch. D. 31, at p. 47 ; 48 L. J. Ch. 853, James, L. J.

"I think I may say for myself (and I believe I am expressing the views of the other members of the Court) that we ought not to lay down as an absolute rule that decisions of Lord Chancellors, at all events sitting alone, are to be taken as decisions of the Court of Appeal, and absolutely binding on this Court so as to prevent us from even looking into the grounds or considering the case which was before the particular Lord Chancellor. But no doubt the greatest weight ought to be given to such decisions, and unless they are shown to be manifestly wrong or manifestly contrary to the general current of authority on the point decided, it appears to me that we ought not to take upon ourselves to overrule them."—*Ibid.*, at p. 54 ; L. J., at p. 859, Thesiger, L. J.

"I may say I do not consider the decision of a Lord Chancellor is absolutely binding upon us, because every Lord Chancellor's decision was liable to be reheard not only by himself but by his successor, and there are known instances of it. When I was sitting with Lord Justice Mellish we did rehear decisions of the Lord Chancellor Selborne. There is always this to be considered, that it is the decision, no doubt, of a Superior Court of Appeal ; but it is always qualified by this, that according to the old practice of the Court of Chancery it was liable to be reheard."—*Ashworth v. Munn* (1880), 15 Ch. D. 363, at p. 377, James, L. J.

"I think the Lord Chancellor, wherever he is sitting and whatever cases he is trying, is still Lord Chancellor, and that his decision is binding on me."—*Ex parte Vicar of St. Mary, Wigton* (1881), 18 Ch. D. 646, at p. 648, Fry, J.

"It must be remembered that when we have conflicting decisions

of two Lord Chancellors, the decision of the subsequent Lord Chancellor is entitled to greater weight, because the subsequent Lord Chancellor could overrule the decision of the prior Lord Chancellor, and sometimes did. It has not been the practice of modern Courts to exercise the jurisdiction quite so freely as the old Chancellors did, but they overruled one another, and sometimes they overruled their own decisions without the slightest doubt or hesitation. There are remarkable cases even in modern times in which a Lord Chancellor has overruled the decision of his predecessor. One of the most remarkable is one of the earlier cases heard before Lord Lyndhurst, where he varied a decision of Lord Eldon's. There is no doubt about the jurisdiction or about its being exercised."—*Henty v. Wrey* (1882), 21 Ch. D. 332, at p. 346, Jessel, M. R.

"I am of opinion that the decision in *Thomas v. Daw* [(1866), L. R. 2 Ch. 1; 36 L. J. Ch. 201], being a decision of the Lord Chancellor, is a decision by which we are bound."—*Gard v. Commissioners of Sewers of the City of London* (1885), 28 Ch. D. 486, at p. 509; 54 L. J. Ch. 698, at p. 707, Baggallay, L. J.

"Though sometimes a decision of the Court of Appeal [that of Lord Cairns, L. C., sitting alone] is overruled, this is only to be done with great caution."—*In re Watts* (1885), 29 Ch. D. 947, at p. 953; 55 L. J. Ch. 332, at p. 334, Cotton, L. J.

House of Lords.

Independent Reasons of Lords.

A decision of the House of Lords is an authoritative and conclusive declaration of the existing state of the law, and is binding upon itself when sitting judicially, as much as upon all inferior Courts. The doctrine upon which the judgment of the House is founded must be universally taken for law, and can only be altered by Act of Parliament.

Where the Lords give independent reasons, the judgments of the majority who decided the case must only be looked at.

"It appears that judgment—a complete and final judgment—has been pronounced by your Lordship's House in this case. That judgment can only be vacated by a special Act of Parliament to enable the parties, if injustice can be proved to have been done, to be again heard. I remember only one case in which such an Act

was passed for such a purpose.”—*Tommeys v. White* (1850), 3 H. L. Cas. 49, at p. 69, Lord Truro, L. C.

“Several authorities were referred to, in which it had been stated by Lord Eldon and other learned judges that a case once decided here between A. and B. is, as against A. and B., conclusively and for ever decided, and that nothing but an Act of Parliament can afterwards alter the decision. I think that is so.”—*Ex parte White and Others v. Tommeys* (1853), 4 H. L. Cas. 313, at pp. 333-4, Lord Cranworth, L. C.

“It has been doubted by a noble and learned lord, who is not now present, whether this House can correct any error which it has committed. I confess, my Lords, I have always entertained the opinion, that in the particular case, you cannot correct the error—it is settled; nothing but an Act of Parliament can reverse it. But I certainly hold that this House has the same power that every other judicial tribunal has to correct an error (if it has fallen into one) in subsequently applying the law to other cases.”—*Wilson v. Wilson* (1854), 5 H. L. Cas. 40, at p. 63, Lord St. Leonards.

“By the constitution of this United Kingdom, the House of Lords is the Court of Appeal in the last resort, and its decisions are authoritative and conclusive declarations of the existing state of the law, and are binding upon itself when sitting judicially, as much as upon all inferior tribunals. The observations made by members of the House, whether law members or lay members, beyond the *ratio decidendi* which is propounded and acted upon in giving judgment, although they may be entitled to respect, are only to be followed in as far as they may be considered agreeable to sound reason and to prior authorities. But the doctrine on which the judgment of the House is founded must be universally taken for law, and can only be altered by Act of Parliament. So it is, even where the House gives judgment in conformity to its rule of procedure, that where there is an equality of votes, *semper præsumitur pro negante*.”—*Att.-Gen. v. The Dean and Canons of Windsor* (1860), 8 H. L. Cas. 369, at p. 391; 30 L. J. Ch. 529, at p. 531, Lord Campbell, L. C.

“The rule of law which your Lordships lay down as the ground of your judgment, sitting judicially as the last and Supreme Court of Appeal for this Empire, must be taken for law till altered by an Act of Parliament, agreed to by the Commons and the Crown as well as by your Lordships. The law laid down as your *ratio decidendi*, being clearly binding on all inferior tribunals

and on all the rest of the Queen's subjects, if it were not considered as equally binding upon your Lordships, this House would be arrogating to itself the right of altering the law and legislating by its own separate authority."—*Beamish v. Beamish* (1861), 9 H. L. Cas. 274, at pp. 338-9, Lord Campbell, L. C.

"Of course where you have five lords giving independent reasons, it is very difficult to ascertain with accuracy the grounds upon which the House of Lords decided, but I think that in all such cases you must only look at the judgments of the majority who decided the case, for the reasons to be found in their judgments must be either wholly or to some extent the reasons which guided the House of Lords in coming to their conclusion. I therefore confine myself for this purpose to the opinions of the three lords who decided the case in favour of the appellants."—*Redgrave v. Hurd* (1881), 20 Ch. D. 1, at pp. 14, 15; 51 L. J. Ch. 113, at p. 118, Jessel, M. R.

"Now we know that each of them [the lords] considers the matter separately, and then they consider the matter jointly, interchanging their judgments, so that every one of them has seen the judgments of the others. If they mean to differ in their view, they say so openly when they come to deliver their judgments, and if they do not do this, it must be taken that each of them agrees with the judgments of the others."—*Guardians of Poor of West Derby Union v. Guardians of Poor of Atcham Union* (1889), 24 Q. B. D. 117, at p. 120; 59 L. J. M. C. 17, Lord Esher, M. R.

"It has been pointed out by the Master of the Rolls in *Guardians of West Derby Union v. Guardians of Atcham Union* [(1889), 24 Q. B. D. 117; 59 L. J. M. C. 17] (and I entirely concur with him), that where in the House of Lords one of the learned lords gives an elaborate explanation of the meaning of a statute, and some of the other learned lords present concur in the explanation, and none express their dissent from it, it must be taken that all of them agreed in it."—*Overseers of Manchester v. Guardians of Ormskirk Union* (1890), 24 Q. B. D. 678, at p. 682; 59 L. J. M. C. 103, Lord Coleridge, C. J.

Irreconcilable Cases of House of Lords.

The case which is more recent and the more consistent with general principles is to prevail.

"If the two cases [in the House of Lords] are not to be so reconciled, I apprehend that the authority, which is at once the more recent and the more consistent with general principles ought to

prevail.”—*Campbell v. Campbell* (1880), 5 App. Cas. 787, at p. 798, Lord Selborne, L. C.

“It is your Lordships’ duty to maintain, as far as you possibly can, the authority of all former decisions of this House; and although later decisions may have interpreted and limited the application of earlier, they ought not (without some unavoidable necessity) to be treated as conflicting. The reasons which learned lords who concurred in a particular decision may have assigned for their opinions, have not the same degree of authority with the decisions themselves. A judgment which is right, and consistent with sound principles, upon the facts and circumstances of the case which the House had to decide, need not be construed as laying down a rule for a substantially different state of facts and circumstances, though some propositions, wider than the case itself required, may appear to have received countenance from those who then advised the House.”—*Caledonian Rail. Co. v. Walker’s Trustees* (1882), 7 App. Cas. 259, at p. 275, Lord Selborne, L. C.

“There have been many decisions on those statutes. I shall think it proper to refer to five in this House, which it is certainly not easy, and to my mind not possible, altogether to reconcile.”—*Ibid.*, at p. 294, Lord Blackburn.

“If this [*Metropolitan Board of Works v. McCarthy* (1874), L. R. 7 H. L. 243; 43 L. J. C. P. 385] is in conflict with the previous decision in *Caledonian Railway Co. v. Ogilvy* [(1856), 2 Macq. 229], and in candour I must admit that I think it is, I think we ought to follow the later and more deliberate decision.”—*Ibid.*, at p. 302, Lord Blackburn.

Privy Council.

A decision of the Privy Council which has been reported to Her Majesty, and has been sanctioned and embodied in an Order of Council, becomes the decree or order of the final Court of Appeal.

In cases of mercantile and Admiralty law, where the same principles are professedly followed in the colonies and in this country, it is highly undesirable that there should be any conflict between the decisions of the Judicial Committee and those of the High Court or Courts of Appeal in this country.

“When a decision of this board has been reported to Her Majesty, and has been sanctioned and embodied in an Order of

Council, it becomes the decree or order of the final Court of Appeal—the House of Lords, which was brought into the discussion, having no jurisdiction whatever in the subject-matter of it—and that it is the duty of every subordinate tribunal to whom the order is addressed to carry it into execution.”—*Pitts v. La Fontaine* (1880), 6 App. Cas. 482, at p. 483, *per* Sir James W. Colville, delivering the judgment of their Lordships.

“It is true that the decisions of the Privy Council are not theoretically binding on this Court, but in cases of mercantile or Admiralty law, where the same principles are professedly followed in the Colonies and in this country, it is, to say the least, highly undesirable that there should be any conflict between the decisions of the Judicial Committee and those of the High Court or Courts of Appeal in this country.”—*The City of Chester* (1884), 9 P. D. 182, at p. 207, Lindley, L. J.

Ecclesiastical Courts.

The temporal Court, proceeding in prohibition to restrain excess of jurisdiction in the Court Ecclesiastical is not bound by a decision of even the highest Court of Appeal in ecclesiastical matters.

“I think that there is authority for saying that the temporal Court, proceeding in prohibition to restrain excess of jurisdiction in the Court Ecclesiastical is not bound by a decision of even the highest Court of Appeal in ecclesiastical matters. The temporal Courts had carried on a long struggle, first, before the Reformation, with the Pope, and afterwards during the period subsequent to the Reformation, with the Church and the Crown, and many of their decisions may be attributed to a jealousy which they had thus acquired of the Ecclesiastical Courts. But I do not think that the doctrine now in question is open to observation as founded on that jealousy. I think the very nature of a restraining power involves in it a right to consider the decision of the Court which it is sought to restrain, and (if satisfied on sufficient grounds that the decision was a usurpation) a right, and consequently a duty, to declare that it was so. And though, when an appeal from the Ecclesiastical Courts was transferred to such a body as the Judicial Committee, it might have been thought that the restraining jurisdiction of the temporal Courts was no longer needed, the legislature has not thought fit to take away the prohibition to the

Ecclesiastical Courts.”—*Mackonochie v. Lord Penzance* (1881), 6 App. Cas. 424, at p. 447; 50 L. J. Q. B. 611, at p. 622, Lord Blackburn.

Railway Commissioners.

Decisions of the Railway Commissioners are not to be cited.

“I think we have held that cases before the Railway Commissioners must not be cited as authorities to us.”—*Great Western Rail. Co. v. Railway Commissioners* (1881), 50 L. J. Q. B. 483, at p. 489, *per* Bramwell, L. J.

Irish Courts.

Decisions of the Irish Courts, though entitled to the highest respect, are not binding on English judges.

“I agree therefore entirely with the construction of this statute adopted by the Court of Appeal in Scotland, although we are not bound by it. We look carefully to the decisions of such Courts for assistance, and I have read both the decisions, that of the Court in Scotland and the Court in Ireland, and, without being bound by either, my rule of construction accords with that applied in the former case.”—*The Queen v. Commissioners of Income Tax* (1888), 22 Q. B. D. 296, at p. 306; 58 L. J. Q. B. 196, at p. 199, Lord Esher, M. R.

“Decisions of the Irish Courts, though entitled to the highest respect, are not binding on English judges.”—*In re Parsons, Stockley v. Parsons* (1890), 45 Ch. D. 51, at p. 62; 59 L. J. Ch. 666, at p. 671, Kay, J.

Scotch Courts.

The decisions of the Court of Session ought to have consideration and respect paid to them on points of law common to both England and Scotland, but such decisions, however, are not binding in England.

“It was said that that [the case cited] was an authority, although not strictly binding on us, but yet a very high authority, indeed, of the Court of Session, and one which, if in point, I should pay the greatest possible respect to, although we might not feel ourselves bound by it.”—*Great Western Rail. Co. v. Railway Commissioners* (1881), 50 L. J. Q. B. 483, at p. 486, Field, J.

“The plaintiffs relied on two recent decisions of the Court of Session which no doubt are in their favour. But, although we ought to pay respect to the opinion on a point of law

common to both England and Scotland expressed by that Court, their decisions cannot be considered binding here.”—*Johnson v. Raylton* (1881), 7 Q. B. D. 438, at p. 445; 50 L. J. Q. B. 753, at p. 756, Cotton, L. J.

“As to authority, there are only the Scotch cases, which are to be treated with every respect.”—*Ibid.*, at p. 455; L. J., at p. 761, Brett, L. J.

“Now although that case [*Wilson v. The Glasgow Tramways and Omnibus Co.*, Court of Session Cases, 5th Series, Vol. 5, p. 981] is not an authority which is absolutely binding upon us, the Court of Sessions not being for this purpose a Court of co-ordinate jurisdiction with ourselves, far be it from me to say that the decisions of that Court are not entitled to receive the greatest consideration and respect at our hands. It has been strongly urged that it would be inconvenient if a different law were to prevail on this side of the Tweed from that which is administered on the other side. If that be so, it is an inconvenience which has subsisted for a very long time; and I do not anticipate that any very grave inconvenience will result if we take a different view of the meaning of an Act of Parliament from that which the judges who preside in the Scotch Courts do.”—*Morgan v. London General Omnibus Co.* (1883), 12 Q. B. D. 201, at p. 205, Day, J.

Effect of decision of House of Lords in Scotland on English law and on Scotch law.

“A decision of this House, in an English case, ought to be held conclusive in Scotland, as well as in England, as to the questions of English law and English jurisdiction which it determined. It cannot, of course, conclude any question of Scottish law, or as to the jurisdiction of any Scottish Court in Scotland. So far as it may proceed upon principles of general jurisprudence, it ought to have weight in Scotland; as a similar judgment of this House on a Scotch appeal ought to have weight in England. If, however, it can be shown that by any positive law of Scotland, or according to authorities having the force of law in that country, a different view of the proper interpretation, extent, or application of those principles prevails there, the opinions on those subjects expressed by noble and learned lords when giving judgment on an English appeal ought not to be held conclusive in Scotland. When a Scottish decision, in apparent conflict with them, is brought to the bar of this House, the first duty of your lordships must (I con-

ceive) be, to ascertain, whether there is any settled rule of Scottish law, requiring or justifying that decision. If not, it may still be open to the House to reconsider the points raised, in any new light which may be presented by the view of them taken in the Scottish Court."—*Ewing v. Orr Ewing* (1885), 10 App. Cas. 453, at p. 499, Earl of Selborne.

American Courts.

American decisions are not authorities, but decisions of learned judges that ought to influence the House of Lords to come to the same conclusion.

"An appeal was made by the learned counsel to an American case, not, of course, as to an authority, because I take it that a judgment of a Court in *New York* is not an authority in a case arising in *England*, with regard to English rules of procedure, but as a decision of learned judges that ought to influence the House to come to the same conclusion."—*Castro v. The Queen* (1881), 6 App. Cas. 229, at p. 249; 50 L. J. Q. B. 497, at p. 507, Lord Watson.

"In coming to that conclusion, as I do upon principle, I am much strengthened by the American authorities to which my attention has been called by Mr. Cookson."—*Steel v. Dixon* (1881), 17 Ch. Div. 825, at p. 831; 50 L. J. Ch. 591, at p. 593, Fry, J.

Part II.—RULES OF LEGAL INTERPRETATION APPLICABLE TO ALL INSTRUMENTS.

SECTION I.

INTRODUCTORY CAUTIONS.

	PAGE
Maxims	30
Stereotyped Rules	30

Maxims.

The law should not be fettered by maxims.

“I need hardly repeat that I detest the attempt to fetter the law by maxims. They are almost invariably misleading: they are for the most part so large and general in their language that they always include something which really is not intended to be included in them.”—*Yarmouth v. France* (1887), 19 Q. B. D. 647, at p. 653; 57 L. J. Q. B. 7, at p. 9, Lord Esher, M. R.

Stereotyped Rules.

Stereotyped rules of juridical writers cannot be accepted as infallible canons.

“Stereotyped rules laid down by juridical writers cannot, therefore, be accepted as infallible canons of interpretation in these days, when commercial transactions have altered in character and increased in complexity; and there can be no hard-and-fast rule by which to construe the multiform commercial agreements with which in modern times we have to deal.”—*Jacobs v. Crédit Lyonnais* (1884), 12 Q. B. D. 589, at p. 601; 53 L. J. Q. B. 156, at p. 159, Bowen, L. J., delivering the judgment of the Court of Appeal.

SECTION II.

RULES APPLICABLE TO ALL INSTRUMENTS.

	PAGE
Duties of Court and Jury	31
Sense and Meaning, how collected	31
General Words	32
Particular Words	34
Insensible Words and Phrases	34
Circumstances and Object	35
Lord Wensleydale's Golden Rule... ..	37
Context— <i>Noscitur a Sociis</i>	39
Capricious Intention	39
Date	40
Time, Computation of	40

Duties of Court and Jury.

It is the duty of the jury to ascertain as facts the true meaning of words of art, commercial phrases, and surrounding circumstances, and then to take the construction of the instrument from the judge, otherwise the entire construction belongs to the judge.

“The construction of all written instruments belongs to the Court alone, whose duty it is to construe all such instruments, as soon as the true meaning of the words in which they are couched, and the surrounding circumstances, if any, have been ascertained as facts by the jury; and it is the duty of the jury to take the construction from the Court, either absolutely, if there be no words of art or phrases used in commerce, and no surrounding circumstances to be ascertained; or conditionally, when those words or circumstances are necessarily referred to them. Unless this were so, there would be no certainty in the law: for a misconstruction by the Court is the proper subject, by means of a bill of exceptions, of redress in a Court of Error; but a misconstruction by the jury cannot be set right at all effectually.”—*Neilson v. Harford* (1841), 8 M. & W. 806, p. 823; 11 L. J. Ex. 20, at p. 25, *per cur.*

Sense and Meaning, how collected.

The sense and meaning of an instrument should be collected from the terms used therein.

The terms of an instrument are to be understood (in the first place) in their plain, ordinary, and popular sense, (in the second place) in any peculiar sense they may have acquired in trade, &c., (in the third place) in any special and peculiar sense pointed out by the context.

“The same rule of construction which applies to all other instruments applies equally to this instrument of a policy of insurance, viz., that it is to be construed according to its sense and mean-

ing, as collected in the first place from the terms used in it, which terms are themselves to be understood in their plain, ordinary, and popular sense, unless they have generally, in respect of the subject-matter, as by the known usage of trade, or the like, acquired a peculiar sense distinct from the popular sense of the same words; or unless the context evidently points out that they must, in the particular instance, and in order to effectuate the immediate intention of the parties to that contract, be understood in some special and peculiar sense.”—*Robertson v. French* (1803), 4 East, 130, p. 135, Lord Ellenborough, delivering the judgment of the Court. [Quoted in *Hart v. Standard Marine Insurance Company* (1889), 22 Q. B. D. 499, at pp. 501, 502; 58 L. J. Q. B. 284, at p. 286, *per* Bowen, L. J.]

General Words.

Ejusdem Generis Doctrine.

General words are primâ facie to be taken in their usual sense, unless the reasonable construction of the instrument requires them to be used in a sense limited to things ejusdem generis with those which have been specifically mentioned before.

If the particular words exhaust the whole genus, the general words refer to some larger genus.

Generalia verba sunt generaliter intelligenda.—3 Inst. cap. 21, p. 76.

“I will take first the rule as stated by Lord Eldon in *Church v. Mundy* [(1808), 15 Ves. 396, 406]. He said ‘the best rule of construction is that which takes the words to comprehend a subject that falls within their usual sense, unless there is something like declaration plain to the contrary.’ That is, as I understand him, *primâ facie* you are to give the words their larger meaning, unless you find something which plainly shows that they were intended to be read in a more restricted sense.

“Then again, Knight-Bruce, V.-C., in *Parker v. Marchant* [(1842), 1 Y. & C. 290, at p. 300; 11 L. J. Ch. 223, at p. 226], said: ‘The words “goods, chattels, and effects” which the bequest contained to be residuary contains, or any of them, are terms that, in their proper sense and nature, are sufficiently large to include and pass the absolute interest in the whole personal estate. But a will may be so worded as to shew that, according to a reasonable construction of it, the testator must have intended to use those terms in a limited and restricted sense: and when this appears, the intention so collected must have effect given to it. It is, however, incumbent on those who contend for the limited

construction to show that a rational interpretation of the will requires a departure from that which ordinarily and *primâ facie* is the sense and meaning of the words.'

"Nothing can well be plainer than that to show that *primâ facie* general words are to be taken in their larger sense, unless you can find that in the particular case the true construction of the instrument requires you to conclude that they are intended to be used in a sense limited to things *ejusdem generis* with those which have been specifically mentioned before. . . . I entirely adopt the canon of construction which was laid down by Knight Bruce, V.-C., in *Parker v. Marchant* [(1842), 1 Y. & C. 290; 11 L. J. Ch. 223, at p. 226], and I reject the supposed rule that general words are *primâ facie* to be taken in a restricted sense."—*Anderson v. Anderson*, [1895] 1 Q. B. 749, at pp. 753, 754; 64 L. J. Q. B. 457, at p. 459, Lord Esher, M. R.

"The doctrine known as that of *ejusdem generis* has, I think, frequently led to wrong conclusions on the construction of instruments. I do not believe that the principles as generally laid down by great judges were ever in doubt, but over and over again those principles have been misunderstood, so that words in themselves plain have been construed as bearing a meaning which they have not, and which ought not to have been ascribed to them. In modern times I think greater care has been taken in the application of the doctrine; but the doctrine itself, as laid down by great judges from time to time, has never been varied; it has been one doctrine throughout. The main principle upon which you must proceed is to give all the words their common meaning; you are not justified in taking away from them their common meaning, unless you can find something reasonably plain upon the face of the document itself to show that they are not used with that meaning; and the mere fact that general words follow specific words is certainly not enough. One need not travel beyond the case of *Parker v. Marchant* [*supra*] to find great authority for that proposition—I mean not only the authority of the case itself, which is deservedly high, but other authorities which are cited in it. Lord Eldon, Lord Cottenham, Sir William Grant, Sir John Leach, and Knight Bruce, V.-C., himself, all lay down the rule to the effect I have stated. You must give the words which you find in the instrument their general meaning, unless you can see with reasonable plainness that that was not the intention of the testator

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or settlor. We must look at the surroundings.”—*Anderson v. Anderson*, [1895] 1 Q. B. 749, at p. 755; 64 L. J. Q. B. 457, at p. 459, Rigby, L. J.

“That case [*Reg. v. Payne* (1866), L. R. 1 C. C. 27; 35 L. J. M. C. 170] falls within the rule that if the particular words exhaust the whole *genus*, the general word must refer to some larger *genus*.”—*Fenwick v. Schmalz* (1868), L. R. 3 C. P. 313, at p. 315; 37 L. J. C. P. 78, at p. 80, Willes, J.

Particular Words.

The meaning of particular words is to be found in the subject or occasion on which they are used, and the object that is intended to be obtained.

“The meaning of particular words in Acts of Parliament, as well as other instruments, is to be found not so much in a strict etymological propriety of language, nor even in popular use, as in the subject or occasion on which they are used, and the object that is intended to be obtained.”—*Rex v. Hall* (1822), 1 B. & C. 122, at p. 136, Abbott, C. J., delivering the judgment of the Court.

See also Comyn’s Digest, Vol. V., “Parols.”

Jacob’s Law Dictionary.

Kelham’s Norman Law Dictionary.

Stroud’s Judicial Dictionary.

Wharton’s Law Lexicon.

Insensible Words and Phrases.

A word or a phrase in an instrument to which no sensible meaning can be given must be eliminated.

“We have no power, indeed, to alter the words or to insert words which are not in the deed, but we may, and ought to, construe the words in a manner most agreeable to the meaning of the grantor, and may reject any words that are merely insensible. These maxims, my Lords, are founded on the greatest authority, Coke, Plowden, and Lord Chief Justice Hale.”—*Smith v. Packhurst* (1741-2), 3 Atk. 135, at p. 136, Willes, C. J.

“The ordinary rule of interpretation requires that construction, which attributes some meaning to words, rather than totally to

reject them as surplusage.”—*Stratford v. Bosworth* (1813), 2 Ves. & Bea. 341, at p. 347, Sir Thomas Plumer, V.-C.

“It is a canon of construction that, if it be possible, effect must be given to every word of an Act of Parliament or other document; but that, if there is a word or a phrase therein to which no sensible meaning can be given, it must be eliminated.”—*Stone v. Corporation of Yeovil* (1876), 1 C. P. D. 691, at p. 701; 45 L. J. C. P. 657, at p. 660, Brett, J.

Circumstances and Object.

The object of construing an instrument is to see what is the intention expressed by the words used.

If from the imperfection of language it is impossible to know what the intention is without inquiring further, then see what the circumstances were with reference to which the words were used, and what was the object, appearing from those circumstances, which the person using them had in view.

“I apprehend that, in construing an Act of Parliament, a deed, will, or whatever other instrument may have to be construed by the Court, I have a right to look to all the circumstances which the parties to the instrument, whether a testator, a donor, or the legislature, who are executing a solemn act, had before them at the time, and were themselves contemplating, as proved, not of course by any extrinsic evidence, but by evidence afforded by the instruments themselves, and also such matters as can be proved by extrinsic evidence to have been the circumstances which surrounded them, and which may have affected the conclusion at which they arrived.”—*Att.-Gen. v. Earl of Powis* (1853), Kay 186, at p. 207, Sir W. Page Wood, V.-C.

“The principles of construction of statutes laid down by this House in the present case, must have an important effect on those who have to construe that [the Harbour, Docks, and Piers Clauses Act, 1847, 10 Vict. c. 27], or any other enactment. My Lords, it is of great importance that those principles should be ascertained, and I shall therefore state, as precisely as I can, what I understand from the decided cases to be the principles on which the courts of law act in construing instruments in writing, and a statute is an instrument in writing. In all cases the object is to see what is the intention expressed by the words used. But from the imperfection of language, it is impossible to know what that inten-

tion is without inquiring farther, and seeing what the circumstances were with reference to which the words were used, and what was the object, appearing from those circumstances, which the person using them had in view, for the meaning of words varies according to the circumstances with respect to which they were used. I do not know that I can make my meaning plainer than by referring to the old rules of pleading as to innuendoes in cases of defamation. Those rules, though highly technical, were very logical. No innuendo could enlarge the sense of the words beyond that which they *primâ facie* bore, unless it was supported by an inducement or preliminary averment of facts, and an averment that the libel was published, or the words spoken, of and concerning those facts, and of and concerning the plaintiff as connected with those facts. If those preliminary averments were proved, words which *primâ facie* bore a very innocent meaning might be shown to convey a very injurious one, and it was for the Court to say whether, when used of and concerning the inducement, they bore the meaning imputed by the innuendo. See the notes to *Craft v. Boite* (1681) [1 Wms. Saund. 246b]. The legislature has rendered it no longer necessary to set out on the record the facts, and the *colloquium* necessary to support an innuendo: they are now only matter of proof on the trial, but the principle remains.

“In construing written instruments I think the same principle applies. In the cases of wills the testator is speaking of and concerning all his affairs, and, therefore, evidence is admissible to show all that he knew, and then the Court has to say what is the intention indicated by the words when used with reference to these extrinsic facts, for the same words used in two wills may express one intention when used with reference to the state of one testator’s affairs and family, and quite a different one when used with reference to the state of the other testator’s affairs and family.

“In the case of a contract, the two parties are speaking of certain things only, and therefore the admissible evidence is limited to those circumstances of and concerning which they used those words; see *Graves v. Legg* [(1854), 9 Ex. 709; 23 L. J. Ex. 228].

“In neither case does the Court make a will or a contract such as it thinks the testator or the parties wished to make, but declares what the intention, indicated by the words used under such circumstances, really is.

“And this, as applied to the construction of statutes, is no new doctrine. As long ago as *Heydon’s Case* [(1584), 2 Coke, p. 18,

Part III., 7b] Lord Coke says, that it was resolved 'That for the sure and true interpretation of all statutes in general (be they penal or beneficial, restrictive or enlarging of the Common Law) four things are to be discerned and considered :—

'First. What was the Common Law before the making of the Act ?

'Second. What was the mischief and defect for which the Common Law did not provide ?

'Third. What remedy the Parliament hath resolved and appointed to cure the disease of the Commonwealth ? and

'Fourth. The true reason of the remedy ;

and then the office of all the judges is always to make such construction as shall suppress the mischief and advance the remedy.'

"But it is to be borne in mind that the office of the judges is not to legislate, but to declare the expressed intention of the legislature, even if that intention appears to the Court injudicious ; and I believe that it is not disputed that what Lord Wensleydale used to call the golden rule is right."—*River Wear Commissioners v. Adamson* (1877), 2 App. Cas. 743, at p. 763 ; 47 L. J. Q. B. 193, at pp. 202, 203, Lord Blackburn.

Lord Wensleydale's Golden Rule.

The Grammatical and Ordinary Sense not modified unless to avoid absurdity, repugnance, and inconsistency.

In construing wills, and indeed statutes and all written instruments, the grammatical and ordinary sense of the words is to be adhered to, unless that would lead to some absurdity or some repugnance or inconsistency with the rest of the instrument, in which case the grammatical and ordinary sense of the words may be modified so as to avoid that absurdity and inconsistency, and no further.

"It must, however, be conceded that where the grammatical construction is quite clear and manifest, and without doubt, that construction ought to prevail, unless there be some strong and obvious reason to the contrary. But the rule which has been adverted to is subject to this condition, that however plain the apparent grammatical construction of a sentence may be, if it be perfectly clear from the contents of the same document (and the same rule applies in the construction not only of an Act of Parliament, but of deeds,

wills, and of any subject of a like nature) that the apparent grammatical construction cannot be the true one, then that which upon the whole is the true meaning shall prevail, in spite of the grammatical construction of a particular part of it."—*Waugh v. Middleton* (1853), 8 Ex. 352, at p. 357; 22 L. J. Ex. 109, at p. 111, Pollock, C. B.

"I entirely agree that to the words in this will we must apply the rule of construction, now, I believe, universally applied in Westminster Hall, that in construing all written instruments, the grammatical and ordinary sense of the words is to be adhered to, unless that would lead to some absurdity, or to some repugnance, or to some inconsistency with the rest of the instrument, in which case the grammatical or ordinary sense of the words may be modified, so as to avoid that absurdity, repugnance, or inconsistency, but no farther. *Warburton v. Loveland* [(1828), 1 Hudson & B. Irish Cas. 623, at p. 648]."—*Thellusson v. Rendlesham* (1859), 7 H. L. Cas. 429, at p. 519; 28 L. J. Ch. 948, at p. 966, Lord Wensleydale.

"There is always some presumption in favour of the more simple and literal interpretation of the words of a statute or other written instrument."—*Caledonian Rail. Co. v. North British Rail. Co.* (1881), 6 App. Cas. 114, at p. 121, Lord Selborne, L. C.

"Now, I believe, there is not much doubt about the general principle. Lord Wensleydale used to enunciate (I have heard him many and many a time) that which he called the golden rule for construing all written engagements. I find that he stated it, very clearly and accurately, in *Grey v. Pearson* [(1857), 6 H. L. C. 61, at p. 106; 26 L. J. Ch. 473, at p. 481] in the following terms: 'I have been long and deeply impressed with the wisdom of the rule, now, I believe, universally adopted, at least in the Courts of Law in Westminster Hall, that in construing wills, and indeed statutes, and all written instruments, the grammatical and ordinary sense of the words is to be adhered to, unless that would lead to some absurdity, or some repugnance or inconsistency with the rest of the instrument, in which case the grammatical and ordinary sense of the words may be modified, so as to avoid that absurdity and inconsistency, but no further.' I agree in that completely, but unfortunately in the cases in which there is real difficulty it does not help us much, because the cases in which there is real difficulty are those in which there is a controversy as to what the grammatical and ordinary sense of the words, used with reference to the subject-

matter, is. To one mind it may appear that the most that can be said is that the sense may be what is contended by the one side, and that the inconsistency and repugnancy is very great, that you should make a great stretch to avoid such absurdity, and that what is required to avoid it is a very little stretch, or none at all. To another mind it may appear that the meaning of the words is perfectly clear—that they can bear no other meaning at all, and that to substitute any other meaning would be, not to interpret the words used, but to make an instrument for the parties—and that the supposed inconsistency or repugnancy is perhaps a hardship—a thing which perhaps it would have been wiser to have avoided, but which we have no power to deal with. The present case is about as good an illustration of that as can very well be.”—*Caledonian Rail. Co. v. North British Rail. Co.* (1881), 6 App. Cas. 114, at p. 131, Lord Blackburn. (Referred to in *Ex parte Walton*, (1881), 17 Ch. D. 746, at pp. 750, 751; 50 L. J. Ch. 657, at p. 659, Jessel, M. R., and in *Spencer v. Metropolitan Board of Works* (1882), 22 Ch. D. 142, at pp. 148, 149, Chitty, J.)

Context—*Noscitur a Sociis*.

“I remember that in determining that question, the Court considered the rule adopted by Lord Hale *noscitur a sociis*, which was no pedantic or inconsiderate expression when falling from him, but was intended to convey in short terms the grounds upon which he formed his judgment.”—*Hay v. Earl of Coventry* (1789), 3 T. R. 83, at p. 87, Lord Kenyon, C. J.

“Again, there is no doubt a rule, applicable to Acts of Parliament as well as to other legal instruments, that you may control the plainest words by a reference to the context. But then, as has been said very often, you must have the context even more plain, or at least as plain—it comes to the same thing—as the words to be controlled.”—*Bentley v. Rotherham and Kimberworth Local Board of Health* (1876), 4 Ch. D. 588, at p. 592; 46 L. J. Ch. 284, Jessel, M. R.

Capricious Intention.

Where by the use of general words the intention is clearly and unequivocally expressed, the Court is bound by it, however capricious it may be, unless it be plainly controlled by other parts of the instrument.

“In the construction of all instruments it is the duty of the Court not to confine itself to the force of particular expressions, but

to collect the intention from the whole instrument taken together. But a Court is not authorized to deviate from the force of a particular expression, unless it finds, in other parts of the instrument, expressions which manifest that the author of the instrument could not have the intention which the literal force of a particular expression would impute to him. However capricious may be the intention which is clearly and unequivocally expressed, every Court is bound by it unless it be plainly controlled by other parts of the instrument."—*Hume v. Rundell* (1824), 2 S. & S. 174, at p. 177, Sir John Leach, V.-C.

Date.

Evidence may be admitted to show that an instrument is wrongly dated.

"The cases cited include instruments of almost every class, and there is the statement of a careful text writer [Tay. Ev.] to the same effect. In *Hall v. Cazenove* [(1804), 4 East 477], evidence was admitted that a charter-party was wrongly dated; and in *Jayne v. Hughes* [(1854), 10 Ex. 430; 24 L. J. Ex. 115], evidence was admitted to show that a deed (a more solemn instrument if possible even than a will) was wrongly dated. Then comes the case in the House of Lords [*Randfield v. Randfield* (1860), 6 Jur. N. S. 901; 30 L. J. Ch. 177], where parol evidence was admitted, apparently without a question being raised, showing that a will purporting on the face of it to be executed before the passing of the Wills Act was actually executed after the Act came into operation."—*Refell v. Refell* (1866), L. R. 1 P. & M. 139, at p. 142; 35 L. J. P. 121, at p. 122, Sir J. P. Wilde.

Time.

After the 31st December, 1751, the year begins on the 1st January, instead of the 25th March.

The Calendar (New Style) Act, 1750, 24 Geo. II. c. 23.

"Whereas the legal supputation of the year of our Lord in that part of Great Britain called England according to which the year beginneth on the 25th day of March hath been found by experience to be attended with divers inconveniences, be it enacted that in and throughout all his Majesty's dominions and countries in Europe, Asia, Africa and America, belonging or subject to the crown of

Great Britain, the said supputation, according to which the year of our Lord beginneth on the 25th day of March, shall not be made use of from and after the last day of December, 1751, and that the 1st day of January next following the said last day of December shall be reckoned, taken, deemed, and accounted to be the first of the year of our Lord 1752; and the 1st day of January which shall happen next after the said 1st day of January, 1752, shall be reckoned, taken, deemed, and accounted to be the 1st day of the year of our Lord 1753; and so on from time to time the 1st day of January in every year which shall happen in time to come shall be reckoned, taken, deemed, and accounted to be the first day of the year, and that each new year shall accordingly commence and begin to be reckoned from the first day of every such month of January next preceding the 25th day of March on which such year would according to the present supputation have begun or commenced."

Time referred to shall be Greenwich or Dublin mean time.

Statutes (Definition of Time) Act, 1880, 43 & 44 Vict. c. 9, s. 1.

"Whenever any expression of time occurs in any Act of Parliament, deed, or other legal instrument, the time referred (*sic*) (? to) shall, unless it is otherwise specifically stated, be held, in the case of Great Britain, to be Greenwich mean time, and in the case of Ireland, Dublin mean time."

Rational Mode of Computation.

"No general rule exists for the computation of time either under the Bankruptcy Act or any other statute, or, indeed, where time is mentioned in a contract, and the rational mode of computation is to have regard in each case to the purpose for which the computation is to be made."—*In re North, Ex parte Hashluck*, [1895] 2 Q. B. 264, at p. 269; 64 L. J. Q. B. 694, at p. 696, Lord Esher, M. R.

"In the reckoning of time each case must depend on its own circumstances and subject-matter, and for this I need only refer to the judgment of Sir William Grant in *Lester v. Garland* [(1808), 15 Ves. 248], to that of Kelly, C. B., in *Isaacs v. Royal Insurance Co.* [(1870), L. R. 5 Ex. 296, at p. 300; 39 L. J. Ex. 189, at p. 191], and of Chitty, J., in *In re Railway Sleepers Supply Co.* [(1885), 29 Ch. D. 204; 54 L. J. Ch. 720]."—*Ibid.*, at p. 272; L. J. at p. 697, A. L. Smith, L. J.

Part III.—CONTRACTS.

SECTION I.

RULES APPLICABLE TO ALL CONTRACTS.

	PAGE
Contract defined	42
Evidence of Contract	43

Contract defined.

A contract is an agreement which the law will enforce, that is, an agreement, made upon sufficient consideration or with certain solemnities, by which something is willed to be done or forborne by one of the parties, such will being communicated to the other of the parties by some act engaging to carry it into effect.

“A contract, according to the well-known definition of Sir William Blackstone [2 Bl. Com. 442], is an agreement upon sufficient consideration to do or not to do a particular act. According to this definition, it is an agreement. Now in order to constitute an agreement or contract two things are requisite—firstly, the will, and secondly, some act, whether in word or deed, whereby that will is communicated to the other party. No man has entered into an agreement or contract to do, or not to do, some particular thing unless he has willed that the thing should be done or forborne, and also has communicated that will to the other party by some act engaging to carry it into effect; when both parties will the same thing, and each communicates his will to the other, with a mutual engagement to carry it into effect, then (and not till then) an agreement or contract between the two is constituted. Now this is not a mere theoretical disquisition, but a statement of sound

practical principles of universal law, and of the law of England in particular.”—*Haynes v. Haynes* (1861), 1 Dr. & Sm. 426, at p. 433; 30 L. J. Ch. 578, at p. 579, Kindersley, V.-C.

“I understand by a contract an agreement which the law will enforce, and I apprehend that, speaking generally, the law will enforce all agreements made upon good consideration, or with certain solemnities which dispense with consideration. Agreement and consideration are thus the elements which constitute a contract not under seal. It may seem trivial to mention such obvious matters, but attention to them appears to me to clear up many decisions which are not otherwise readily explained.”—*Alderson v. Maddison* (1880), 5 Ex. D. 293, at pp. 297, 298; 49 L. J. Ex. 801, at p. 804, Stephen, J.

A contract requires two parties to it.

“A contract requires two parties to it, and a man in one character can, with difficulty, contract with himself in another character.”—*Collinson v. Lister* (1855), 20 Beav. 356, at p. 370; 24 L. J. Ch. 762, at p. 766, Sir John Romilly, M. R.

Evidence of Contract.

A written contract not under seal is not the contract itself, but only evidence—the record of the contract.

“It should be borne in mind that a written contract, not under seal, is not the contract itself, but only evidence—the record of the contract. When the parties have recorded their contract, the rule is that they cannot alter or vary it by parol evidence. They put on paper what is to bind them, and so make the written document conclusive evidence between them. But it is always open to the parties to show whether or not the written document is the binding record of the contract.”—*Wake v. Harrop* (1861), 6 H. & N. 768, at pp. 774, 775; 30 L. J. Ex. 273, at p. 277, Bramwell, B.

SECTION II.

LAWS GOVERNING CONTRACTS.

	PAGE
Where made—Place of Fulfilment	44
Application of <i>Lex Fori</i>	47
Foreign Documents—	
Translation	48
Foreign Stamp Laws	50

Where made—Place of Fulfilment.

The law of the country where a contract is made presumptively governs the nature, the obligation and the interpretation of it, unless the contrary appears to be the express intention of the parties, or the contract is entirely to be performed elsewhere, or the subject-matter is immoveable property situate in another country.

Where the parties, at the time of making the contract, had a view to a different kingdom, the law of the place of fulfilment of the contract presumptively determines its obligations.

Both the above rules must give way to any inference that can legitimately be drawn from the character of the contract and the nature of the transaction.

“As to contracts merely personal, I apprehend it to be a general rule that questions relating to the validity and to the interpretation of a contract, are to be governed by the law of the country where the contract was made.”—*Cooper v. Waldegrave (Earl)* (1840), 2 Beav. 282, at p. 284, Lord Langdale, M. R.

“The general rule in all cases like the present is, that the *lex loci contractus* is to govern in the construction of contracts. But that applies only when the contract is not express; if it is special, it must be construed according to the express terms in which it is framed.”—*Gibbs v. Fremont* (1853), 9 Ex. 25, at p. 30; 22 L. J. Ex. 302, at p. 304, Alderson, B.

“As a general rule, the *lex loci contractus* governs in deciding whether there was illegality in the contract.”—*Branley v. South Eastern Rail. Co.* (1862), 12 C. B. N. S. 63, at p. 72; 31 L. J. C. P. 286, at p. 289, Erle, C. J. (See *Hope v. Hope*, *post*, p. 48.)

“The right to land in Chili must, no doubt, be determined by the *lex loci*, but a contract entered into between three English gentlemen, two of them domiciled and residing in England, and the third residing in Chili, but not having acquired a foreign domicile, must, I think, be governed and construed by the rules of English

law."—*Cood v. Cood* (1863), 33 Beav. 314, at p. 322; 33 L. J. Ch. 273, at p. 278, Sir John Romilly, M. R.

"Considering the authorities which have been brought to my notice, particularly that of *Lloyd v. Guibert* [(1865), L. R. 1 Q. B. 115, at p. 122; 35 L. J. Q. B. 74], it seems to me that the rule is that the law of the place where the contract was made is ordinarily to be adopted in construing it."—*Chamberlain v. Napier* (1880), 15 Ch. D. 614, at p. 630; 49 L. J. Ch. 628, at p. 633, Hall, V.-C.

"What is to be the law by which a contract, or any part of it, is to be governed or applied, must be always a matter of construction of the contract itself as read by the light of the subject-matter and of the surrounding circumstances. Certain presumptions or rules in this respect have been laid down by juridical writers of different countries and accepted by the Courts, based upon common sense, upon business convenience, and upon the comity of nations; but these are only presumptions or *prima facie* rules that are capable of being displaced, wherever the clear intention of the parties can be gathered from the document itself and from the nature of the transaction. The broad rule is, that the law of a country where a contract is made presumably governs the nature, the obligation, and the interpretation of it, unless the contrary appears to be the express intention of the parties. 'The general rule,' says Lord Mansfield, 'established *ex comitate et jure gentium* is that the place where the contract is made, and not where the action is brought, is to be considered in expounding and enforcing the contract. But this rule admits of an exception where the parties, at the time of making the contract, had a view to a different kingdom': *Robinson v. Bland* [(1760), 1 W. Bl. 256, at p. 258; see *Peninsular and Oriental Steam Navigation Co. v. Shand* (1865), 3 Moo. P. C. (N. S.) 272, at pp. 290, 291]. This principle was explained by the Exchequer Chamber in the case of *Lloyd v. Guibert* [(1865), L. R. 1 Q. B. 115, at p. 122; 35 L. J. Q. B. 74] as follows: 'It is, however, generally agreed that the law of the place where the contract is made is *prima facie* that which the parties intended, or ought to be presumed to have adopted as the footing upon which they dealt, and that such law ought therefore to prevail in the absence of circumstances indicating a different intention, as for instance, that the contract is to be entirely performed elsewhere, or that the subject-matter is immoveable property situate in another country, and so forth; which latter, though sometimes treated as distinct rules, appear more properly to be classed as exceptions to the more

general one, by reason of the circumstances indicating an intention to be bound by a law different from that of the place where the contract is made; which intention is inferred from the subject-matter and from the surrounding circumstances so far as they are relevant to construe and determine the character of the contract.' It is obvious, however, that the subject-matter of each contract must be looked at as well as the residence of the contracting parties, or the place where the contract is made. The place of performance is necessarily in many cases the place where the obligations of the contract will have to be enforced, and hence, as well as for other reasons, has been introduced another canon of construction, to the effect that the law of the place of fulfilment of a contract determines its obligations. But this maxim, as well as the former, must, of course, give way to any inference that can legitimately be drawn from the character of the contract and the nature of the transaction. In most cases, no doubt, where a contract has to be wholly performed abroad, the reasonable presumption may be that it is intended to be a foreign contract determined by foreign law; but this *prima facie* view is in its turn capable of being rebutted by the expressed or implied intention of the parties as deduced from other circumstances. Again, it may be that the contract is partly to be performed in one place and partly in another. In such a case, the only certain guide is to be found in applying sound ideas of business, convenience, and sense to the language of the contract itself, with a view to discovering from it the true intention of the parties. Even in respect of any performance that is to take place abroad, the parties may still have desired that their liabilities and obligations shall be governed by English law; or it may be that they have intended to incorporate the foreign law to regulate the method and manner of performance abroad, without altering any of the incidents which attach to the contract according to English law. Stereotyped rules laid down by juridical writers cannot, therefore, be accepted as infallible canons of interpretation in these days, when commercial transactions have altered in character and increased in complexity; and there can be no hard and fast rule by which to construe the multi-form commercial agreements with which in modern times we have to deal."—*Jacobs v. Crédit Lyonnais* (1884), 12 Q. B. D. 589, at pp. 599—601; 53 L. J. Q. B. 156, at p. 158, Bowen, L. J., delivering the judgment of Brett, M. R., and himself.

(See also *In re Missouri Steamship Co.* (1889), 42 Ch. D. 321; 58 L. J. Ch. 721.)

Application of Lex Fori.

The mode of suing, and the time within which the action must be brought, must be governed by the law of the country where the action is brought.

"In the case just mentioned [*Melan v. The Duke of Fitzjames*, (1797), 1 B. & P. 138] the distinction taken by Mr. Justice Heath, who differed from the other judges, was, that in construing contracts the law of the country in which they are made must govern, but that the remedy upon them must be pursued by such means as the law points out where the parties reside. This doctrine is said to correspond with the opinions of Hüber and Voet. I have not had an opportunity of looking into those authorities, but we think, on consideration of the present case, that the distinction laid down by Mr. Justice Heath ought to prevail. A person suing in this country must take the law as he finds it; he cannot, by virtue of any regulation in his own country, enjoy greater advantages than other suitors here, and he ought not, therefore, to be deprived of any superior advantage which the law of this country may confer. He is to have the same rights which all the subjects of this kingdom are entitled to."—*De la Vega v. Vianna* (1830), 1 B. & Ad. 284, at pp. 287-8, Lord Tenterden, C.J., delivering the judgment of the Court. (Cited in *In re Kloebe* (1884), 28 Ch. D. 175, at p. 178; 54 L. J. Ch. 297, at p. 299, by Pearson, J., who added, "and that has been the rule in this country, as far as I know, from the earliest time.")

"The rule which applies to the case of contracts made in one country, and put in suit in the Courts of law in another country, appears to be this: that the interpretation of the contract must be governed by the law of the country where the contract was made (*lex loci contractus*); the mode of suing, and the time within which the action must be brought, must be governed by the law of the country where the action is brought (*in ordinandis judiciis, loci consuetudo, ubi agitur*). See *Huberi Prælectiones Civilis Juris*, tit. 3; *De Conflictu Legum*, sect. 7. This distinction has been clearly laid down and adopted in the late case of *De la Vega v. Vianna* [*supra*]. See also the case of *The British Linen Co. v. Drummond* [(1830), 10 B. & C. 903], where the different authorities are brought together."—*Trimbey v. Vignier* (1834), 1 Bing. N. C. 151, at p. 159, Tindal, C. J.

"The distinction between that part of the law of the foreign country where a personal contract is made, which is adopted, and that which is not adopted by our *English* Courts of law, is well known and established; namely, that so much of the law as affects

the rights and merit of the contract, all that relates '*ad litis decisionem*' is adopted from the foreign country; so much of the law as affects the remedy only, all that relates '*ad litis ordinationem*' is taken from the '*lex fori*' of that country where the action is brought."—*Huber v. Steiner* (1835), 2 Bing. N. C. 202, at p. 210, Tindal, C. J.

"Whatever relates to the remedy to be enforced, must be determined by the *lex fori*, the law of the country to the tribunals of which the appeal is made. This rule is clearly laid down in *The British Linen Co. v. Drummond* [(1830), 10 B. & C. 903]; *De la Vega v. Vianna* [(1830), 1 B. & Ad. 284], and in *Huber v. Steiner* [(1835), 2 Bing. N. C. 202]."—*Don v. Lippmann* (1837), 5 Cl. & F. 1, at p. 13, Lord Brougham.

"As to contracts merely personal, I apprehend it to be a general rule, that questions relating to the validity and to the interpretation of a contract, are to be governed by the law of the country where the contract was made, and that if a remedy for the non-performance of a contract is sought in another country, the mode of suing, and the time within which the suit must be brought are to be governed by the law of the country in which the action is brought."—*Cooper v. Waldegrave (Earl)* (1840), 2 Beav. 282, at p. 284, Lord Langdale, M. R.

"When the Courts of one country are called upon to enforce contracts entered into in another country, the question to be considered is not merely whether the contract sought to be enforced is valid according to the law of the country in which it was entered into, but whether it is consistent with the law and policy of the country in which it is sought to be enforced. A contract may be good by the law of another country, but if it be in breach, fraud, or evasion of the law of this country, or contrary to its policy, the Courts of this country cannot, as I conceive, be called upon to enforce it."—*Hope v. Hope* (1857), 8 D. M. & G. 731, at p. 743; 26 L. J. Ch. 417, at p. 424, Lord Justice Turner.

(See also *Alliance Bank of Simla v. Carey* (1880), 5 C. P. D. 429; 49 L. J. C. P. 781.)

Foreign Documents.

Translation.

"The first question to be considered is, what are the rules by which an *English* Court ought to be governed in construing a foreign contract? Where a written contract is made in a foreign country and in a foreign language, the Court, in order to interpret

it, must first obtain a translation of the instrument; secondly, an explanation of the terms of art (if it contains any); thirdly, evidence of any foreign law applicable to the case; and fourthly, evidence of any peculiar rules of construction, if any such rules exist, by the foreign law. With this assistance the Court must interpret the contract itself on ordinary principles of construction.” —*Di Sora v. Phillpps* (1863), 10 H. L. Cas. 624, at p. 633; 33 L. J. Ch. 129, at p. 131, Lord Cranworth.

“Now, this writing was a business document written in Brazil in the Brazilian language, and with the formalities necessary according to the Brazilian law and custom, by a man of business carrying on business in Brazil. An English Court has to construe it, and the first thing therefore, that the English Court has to do is to get a translation of the language used in the document. Making a translation is not a mere question of trying to find out in a dictionary the words which are given as the equivalent of the words of the document; a true translation is the putting into English that which is the exact effect of the language used under the circumstances. To get at this in the present case you must get the words in English which in business have the equivalent meaning of the words in Brazilian, as used in Brazil, under the circumstances. Therefore you would want a competent translator, competent to translate in that way, and if the words in Brazil had in business a particular meaning different from their ordinary meaning, you would want an expert to say what is that meaning. Amongst those experts you might want a Brazilian lawyer—and a Brazilian lawyer for that purpose would be an expert. That is the first thing the Court has to do. Then, when the Court has got a correct translation into English, it has to do what it always has to do in the case of any such document—either a contract, or such an authority (a power of attorney) as this—that is to say, determine what is to be taken to be the meaning of the party at the time he wrote it; and what is to be inferred from the language which he has used. There are certain inferences which are adopted in ascertaining the meaning of the language used, unless in the particular instance the contrary intention appears. One inference which has been always adopted is this: if a contract is made in a country to be executed in that country, unless there appears something to the contrary, you take it that the parties must have intended that the contract, as to its construction, and as to its effect, and the mode of carrying it out

(which really are the result of its construction), is to be construed according to the law of the country where it was made. But the business sense of all business men has come to this conclusion, that if a contract is made in one country to be carried out between the parties in another country, either in whole or in part, unless there appears something to the contrary, it is to be concluded that the parties must have intended that it should be carried out according to the law of that other country. Otherwise a very strange state of things would arise, for it is hardly conceivable that persons should enter into a contract to be carried out in a country contrary to the laws of that country. That is not to be taken to be the meaning of the parties unless they take very particular care to enunciate such a strange conclusion. Therefore the law has said that if the contract is to be carried out in whole in another country, it is to be carried out wholly according to the law of that country, and that must have been the meaning of the parties. But if it is to be carried out partly in another country than that in which it is made, that part of it which is to be carried out in that other country, unless something appears to the contrary, is taken to have been intended to be carried out according to the laws of that country."—*Chatenay v. Brazilian Submarine Telegraph Co.* (1890), [1891] 1 Q. B. 79, at p. 82; 60 L. J. Q. B. 295, at pp. 297, 298, Lord Esher, M. R.

Foreign Stamp Laws.

One nation does not take notice of the revenue laws of another. If, however, a contract is void by reason of being unstamped or insufficiently stamped in the place where it was made, it cannot be sued on anywhere.

"No country ever takes notice of the revenue laws of another."
—*Holman v. Johnson* (1775), 1 Cowp. 341, at p. 343, Lord Mansfield, C. J.

"One nation does not take notice of the revenue laws of another."
—*Planché v. Fletcher* (1779), 1 Doug. 251, at p. 253, Lord Mansfield, C. J.

"I should clearly hold that if a stamp was necessary to render this agreement valid in Surinam, it cannot be received in evidence without that stamp here. A contract must be available by the law of the place where it is entered into, or it is void all the world over. But I must have more distinct evidence of the law of Surinam upon this subject than the parol evidence of a merchant."—*Clegg v. Levy* (1812), 3 Camp. 166, at p. 167, Lord Ellenborough, C. J.

"It has been settled, or at least considered as settled, ever since the time of Lord Hardwicke, that in a British Court we cannot take notice of the revenue laws of a foreign State. It would be productive of prodigious inconvenience, if in every case in which an instrument was executed in a foreign country, we were to receive in evidence what the law of that country was, in order to ascertain whether the instrument was or was not valid."—*James v. Catherwood* (1823), 3 D. & R. 190, at p. 191, Abbott, C. J.

"The marginal note of *Alves v. Hodgson* [(1797), 7 T. R. 241], is perfectly correct, although I cannot help thinking that there must be some mistake in the report of the case. The marginal note is in these terms: 'The plaintiff cannot recover upon a written contract made in Jamaica, which, by the laws of that island, was void for want of a stamp.' I agree that if for want of a stamp a contract made in a foreign country is void, it cannot be enforced here. But if that case meant to decide that where a stamp is required by the revenue laws of a foreign state before a document can be received in evidence there, it is inadmissible in this country, I entirely disagree."—*Bristow v. Secqueville* (1850), 5 Ex. 275, at p. 279; 19 L. J. Ex. 289, at p. 290, Rolfe, B.

SECTION III.

	PAGE
Legal and Equitable Construction	51
Time, Essence of Contract	53
Greenwich Mean Time	53
Original Draft	54
Two Instruments	54
Court and Jury—Duties of	55
Intention—From Context, from Words used	57
Subsequent Acts of Parties	58
Subsequent Declarations of Parties	58
Altered Circumstances	59
Implied Promise	59
Golden Rule (Bramwell, B.'s)	59
Latent Ambiguity	60
Patent Ambiguity	60

Legal and Equitable Construction.

The construction of a contract is, and must be, the same in a court of equity as in a court of law.

The equitable doctrine of constructive notice does not apply to commercial transactions.

"Like all mercantile contracts, it [the charter-party] ought to have a liberal interpretation. In construing agreements, I know

no difference between a court of law and a court of equity. A court of equity cannot *make* an agreement for the parties; it can only explain what their true meaning was; and that is also the duty of a court of law."—*Hotham v. East India Company* (1779), 1 Doug. 272, at p. 277, Lord Mansfield, C. J.

"It is truly said, the construction of covenants is the same in equity as at law. I hope I shall never see the time in which a contrary doctrine can be held."—*Eaton v. Lyon* (1798), 3 Ves. 689, at p. 692, Sir Richard Pepper Arden, M. R.

"There is no equitable construction of an agreement distinct from its legal construction. To construe is nothing more than to arrive at the meaning of the parties to an agreement, and this must be the aim and end of all Courts which are called upon to enforce any rights created by and growing out of contract."—*Scott v. Corporation of Liverpool* (1858), 3 De G. & J. 334, at p. 360; 28 L. J. Ch. 230, at p. 235, Lord Campbell, L. C.

"The legal construction of the contract is, in my opinion, such as I have expressed, and the construction is, and must be, in equity the same as in a court of law. A court of equity will, indeed, relieve against, and enforce, specific performance, notwithstanding a failure to keep the dates assigned by the contract, either for completion, or for the steps toward completion, if it can do justice between the parties, and if (as Lord Justice Turner said, in *Roberts v. Berry* [(1853), 3 D. M. & G. 285, at p. 291; 22 L. J. Ch. 398]) there is nothing in the 'express stipulations between the parties, the nature of the property, or the surrounding circumstances' which would make it inequitable to interfere with and modify the legal right. This is what is meant, and all that is meant, when it is said that, in equity, time is not of the essence of the contract."—*Tilley v. Thomas* (1867), L. R. 3 Ch. 61, at p. 67, Lord Cairns, L. J.

"Now, as a matter of construction merely, I apprehend the words must have the same meaning in equity as at law. The rights and remedies consequent on that construction may be different in the two jurisdictions, but the grammatical meaning of the expression is the same in each. And if this be so, time is part of the contract; and if there is a failure to perform within the time the contract is broken in equity no less than at law. But in equity there may be circumstances which will induce the Court to give relief against the breach, and sometimes even though occasioned by the neglect of the suitor asking relief. Not so at law, the legal

consequences of the breach must there be allowed strictly to follow."—*Ibid.*, at p. 69, Sir John Rolt, L. J.

"The equitable doctrines of constructive notice are common enough in dealing with land and estates, with which the Court is familiar; but there have been repeated protests against the introduction into commercial transactions of anything like an extension of those doctrines, and the protest is founded on perfect good sense. In dealing with estates in land title is everything, and it can be leisurely investigated; in commercial transactions possession is everything, and there is no time to investigate title; and if we were to extend the doctrine of constructive notice to commercial transactions, we should be doing infinite mischief and paralyzing the trade of the country. That I am not going too far in making these observations will be found by turning to *English and Scottish Mercantile Investment Co. v. Brunton* [[1892] 2 Q. B. 700; 62 L. J. Q. B. 136], and also to what Lord Herschell said about constructive notice, in *London Joint Stock Bank v. Simmons* [[1892] A. C. 201; 61 L. J. Ch. 723]."—*Manchester Trust v. Furness*, [1895] 2 Q. B. 539, at p. 545; 64 L. J. Q. B. 766, at p. 770, Lindley, L. J.

Time, Essence of Contract.

Supreme Court of Judicature Act, 1873, 36 & 37 Vict. c. 66, s. 25, sub-s. (7).

"Stipulations in contracts, as to time or otherwise, which would not before the passing of this Act have been deemed to be or to have become of the essence of such contracts in a court of equity, shall receive in all Courts the same construction and effect as they would have heretofore received in equity."

Supreme Court of Judicature Act, 1875, 38 & 39 Vict. c. 77, s. 10.

"In sub-section seven of the said section (twenty-five of the principal Act, 36 & 37 Vict. c. 66) the reference to the date of the passing of the principal Act shall be deemed to refer to the date of the commencement of the principal Act (*viz.*, the second day of November, 1874)."

Greenwich Mean Time.

Statutes (Definition of Time) Act, 1880, 43 & 44 Vict. c. 9 (2nd August, 1880), s. 1.

"Whenever any expression of time occurs in any Act of Parliament, deed, or other legal instrument the time referred [*sic*] shall,

unless it is otherwise specifically stated, be held in the case of Great Britain to be Greenwich mean time, and in the case of Ireland, Dublin mean time." (See *ante*, p. 41.)

Original Draft.

It is competent for the Court to look at what was the original draft or form of a contract, but not to receive any parol or other evidence dehors the document itself.

"Now, I think that, for the purpose of ascertaining whether or no this was the intention of the parties, we have a right to look at the document as it originally stood, and at the alterations which have been made in it, and to see whether those alterations will throw any light upon the question. The lease is printed in the most material part of it, and it has originally been a blank printed form, and it is in the printed parts that those stipulations which appear to be inconsistent with a tenancy for a single year are to be found. It is surely competent for the Court to look at what has originally been the printed form, and at what is introduced in writing, to alter the original provisions of that printed form. We have a right to do so, because these matters are apparent on the face of the instrument, and we do not go out of the instrument, or receive any parol or other evidence *dehors* the document itself."—*Strickland v. Maxwell* (1834), 2 C. & M. 539, at p. 550, Bayley, B.

"If it were necessary to determine whether or not we could look at the alteration in the draft, as a key to the meaning of the parties, I must confess I should have felt considerable doubt. It might be letting in contradictory parol evidence to shew the circumstances under which the alteration was made."—*Cumberland v. Bowes* (1854), 15 C. B. 348, at p. 356; 24 L. J. C. P. 46, at p. 48, Jervis, C. J., delivering the judgment of the Court.

Two Instruments.

"I know the general rule to be that an instrument must be construed by the provisions contained in it, and not by anything *dehors*. But, whatever may be the law on the subject, justice requires, in this case, that I should keep in view the language of the second instrument. The same intention seems to have continued for two years; and I think, under the circumstances, I am entitled to use the language of the second bond in construing the first. I state this distinctly, in order that, if it shall be considered worth while to carry this case elsewhere, the manner in which I arrive at my conclusion may be understood."—*Fowler v. Hunter* (1829), 3 Y. & J. 506, at p. 513, Sir William Alexander, C. B.

Duties of Court and Jury.

It is the duty of the jury to ascertain as facts the true meaning of technical words in a contract, or expressions used in a contract which have in particular trades, businesses, or places a known meaning attached to them, and the surrounding circumstances, and then to take the construction of the contract from the judge, otherwise the entire construction belongs to the judge.

"It appears to me that the question as to the interpretation of this contract (for delivery of barley) is a question entirely for the Court, and not for the jury. That they should ever be the judges on such a matter was founded on this, that there might be technical words used in a contract, which the jury might understand, and the Court might not; but it would be contrary to all practice to say, after the terms are explained to the satisfaction of the Court, that the jury are to have the interpretation of the contract, and not the Court."—*Hutchison v. Bowker* (1839), 5 M. & W. 535, at p. 540; 9 L. J. Ex. 24, at p. 25, Lord Abinger, C. B.

"The law I take to be this—that it is the duty of the Court to construe all written instruments; if there are peculiar expressions used in it, which have, in particular places or trades, a known meaning attached to them, it is for the jury to say what the meaning of these expressions was, but for the Court to decide what the meaning of the contract was."—*Ibid.*, at p. 542, Parke, B.

"If the surrounding circumstances at the time the instrument was made show that the parties intended to use the word not in its primary or strict sense, but in some secondary meaning, the judge may construe it from such circumstances according to the intention of the parties—*Goldshede v. Swan* [(1847), 1 Ex. 154; 16 L. J. Ex. 284]; *Walker v. Hunter* [(1845), 2 C. B. 324; 15 L. J. C. P. 12]; Bacon's Maxims, 10, and examples there given; *Mallan v. May* [(1844), 13 M. & W. 511; 14 L. J. Ex. 48], and *Beckford v. Crutwell* [(1832), 1 M. & R. 187]. If there is evidence that the word was used in a sense peculiar to a trade, business, or place, the jury must say whether the parties used it in that peculiar sense—*Smith v. Wilson* [(1832), 3 B. & Ad. 728; 1 L. J. K. B. 194]; *Grant v. Maddox* [(1846), 16 L. J. Ex. 227]; *Jolly v. Young* [(1794), 1 Esp. N. P. C. 186]. If the meaning of a word depends on the usage of

the place where anything under the instrument is to be done, evidence of such usage must be left to the jury—*Robertson v. Jackson* [(1845), 2 C. B. 412; 15 L. J. C. P. 28]; *Bourne v. Gatliff* [(1844), 11 Cl. & F. 45]. Also the jury may have to give the meaning of some technical words.”—*Simpson v. Margitson* (1847), 11 Q. B. 23, at p. 32; 17 L. J. Q. B. 81, at p. 84, Lord Denman, C. J., delivering judgment.

“When ambiguity exists about the meaning of an expression, and you look at other letters and extrinsic evidence for the purpose of deciding whether the sense in which the defendant says it is to be construed be correct or not, you at once get out of the rule that it is the duty of a judge to explain the document which contains the ambiguity.”—*Smith v. Thompson* (1849), 18 L. J. C. P. 314, at p. 319, Wilde, C. J.

“It is well known that when expressions in a document are ambiguous, and that the ambiguity appears from extrinsic evidence, extrinsic evidence is also admitted to explain the ambiguity, and then the sense in which the expression is to be understood is for the jury.”—*Ibid.*, Maule, J.

“For myself I must confess I feel much disposed to say, that, as it was not suggested at the trial that the words of the contract had any technical meaning (in which case it would have been a question for the jury), but are words of ordinary use in the English language, its construction was for the judge.”—*Alexander v. Vanderzee* (1872), L. R. 7 C. P. 530, at p. 533, Kelly, C. B.

“Generally speaking, the construction of a written contract is for the Court, unless it contains words of a technical or conventional use in a particular trade, in which case it is for the jury.”—*Ibid.*, at pp. 533, 534, Blackburn, J.

“My lords, so far as the construction of the contract expressed in these words is concerned, unless there is something peculiar to the words by reason of the custom of the trade to which the contract relates, the construction of the contract is for the Court. That has been said so often that I need not refer your lordships to any authority upon the subject. The Court it is which, when once it is in possession of the circumstances surrounding the contract, and of any peculiarity of meaning which may be attached by reason of the custom of trade, to any of the words of the contract, has to place the construction upon the contract.”—*Bowes v. Shand* (1877), 2 App. Cas. 455, at p. 462; 46 L. J. Q. B. 561, at p. 564, Cairns, L. C.

Intention.

From Context—from Words used.

The intention of the parties to a contract is to be collected from the whole instrument.

The words are to be construed according to their strict and primary acceptance, unless from the context of the instrument, and the intention of the parties to be collected from it, they appear to be used in a different sense, or unless, in their strict sense, they are incapable of being carried into effect, and subject always to the observation that the meaning of a particular word may be shown, by parol evidence, to be different in some particular place, trade, or business, from its proper and ordinary acceptance.

A contract, being unintelligible, must be treated as void.

“The only safe rule to be followed in the construction of a deed is, the intention of the parties, to be collected from a due consideration of the whole instrument.” — *Nind v. Marshall* (1819), 1 B. & B. 319, at p. 326, Richardson, J.

“Words are to be construed according to their strict and primary acceptance, unless from the context of the instrument and the intention of the parties to be collected from it, they appear to be used in a different sense, or unless, in their strict sense, they are incapable of being carried into effect, and subject always to the observation that the meaning of a particular word may be shewn, by parol evidence, to be different in some particular place, trade, or business, from its proper and ordinary acceptance.” — *Mallan v. May* (1844), 13 M. & W. 511, at pp. 517-8; 14 L. J. Ex. 48, at p. 51, Pollock, C. B.

“I admit the force of the appellant’s argument that contracts ought to be construed according to the primary and natural meaning of the language in which the contracting parties have chosen to express the terms of their mutual agreement. But there are exceptions to the rule. One of these is to be found in the case where the context affords an interpretation different from the ordinary meaning of the words; and another in the case where their conventional meaning is not the same with their legal sense. In the latter case, the meaning to be attributed to the words of the contract must depend upon the consideration whether, in making it, the parties had or had not the law in their contemplation.” — *McCowan v. Baine*, [1891] A. C. 401, at p. 408, Lord Watson.

"The agreement being unintelligible must be treated as void."
—*In re Vince, Ex parte Baxter*, [1892] 2 Q. B. 478, at p. 479;
61 L. J. Q. B. 836, at p. 837, the Court (Lord Esher, M. R., and
Bowen and A. L. Smith, L. JJ.).

Subsequent Acts of Parties.

The acts of the parties done under the contract can be looked at to ascertain the intention, if the words of the contract are ambiguous.

"Upon the general and leading principle in such cases, we are to look to the words of the instrument and to the acts of the parties to ascertain what their intention was; if the words of the instrument be ambiguous, we may call in aid the acts done under it as a clue to the intention of the parties."—*Doe d. Pearson v. Ries* (1832), 8 Bing. 178, at p. 181, Tindal, C. J.

"There is no better way of seeing what they intended than seeing what they did, under the instrument in dispute."—*Chapman v. Black* (1838), 4 Bing. N. C. 187, at p. 193, Tindal, C. J.

"I do not deny that facts existing at the time of making the agreement may be admissible to assist the Court in determining the meaning of the language; nor do I deny that an act done or letter written after the agreement may be evidence of a fact existing at the time, material to the right interpretation of the agreement. But no point of law can, I apprehend, be better settled than this: that in construing an agreement, no acts of the parties subsequent to the making of it are (as such) admissible for the purpose of determining its meaning. The acts of the parties subsequent to the agreement may be material to show that a writing does not express that which the parties intended to express in it; and proof of that may be a reason why this Court should refuse to act upon the written agreement. But that is a very different thing from deducing from the acts of the parties the meaning of the agreement itself."—*Monro v. Taylor* (1850), 8 Ha. 51, at p. 56, Sir L. Shadwell, V.-C.

Subsequent Declarations of Parties.

To construe a contract the circumstances and grounds upon which the contract was entered into can be looked at, but subsequent declarations and admissions, either verbal or written, cannot.

"It is always legitimate to look at all the co-existing circumstances in order to apply the language, and so to construe the

contract; but subsequent declarations showing what the party supposed to be the effect of the contract are not admissible to construe it."—*Lewis v. Nicholson* (1852), 18 Q. B. 503, at p. 510; 21 L. J. Q. B. 311, at p. 315, Lord Campbell, C. J.

"I think that subsequent admissions, whether in writing or not, are not to be taken into account by us in construing the written instrument in which the contract was contained."—*Ibid.*, at p. 514; L. J. at p. 317, Erle, J.

Altered Circumstances.

"What is the view expressed in *Jackson v. The Union Marine Insurance Co.* (1873), L. R. 8 C. P. 572, at p. 581; 42 L. J. C. P. 284, at pp. 288, 289? I read, 'These authorities seem to support the proposition, which appears on principle to be very reasonable, that where a contract is made with reference to certain anticipated circumstances, and where, without any default of either party, it becomes wholly inapplicable to, or impossible of application to any such circumstances, it ceases to have any application; it cannot be applied to other circumstances which could not have been in the contemplation of the parties when the contract was made.'"—*Bush v. Whitehaven Trustees* (1888), 52 J. P. 392, at p. 393, Lord Coleridge, C. J.

Implied Promise.

"It seems to me that whenever circumstances arise in the ordinary business of life in which, if two persons were ordinarily honest and careful, the one of them would make a promise to the other, it may properly be inferred that both of them understood that such a promise was given and accepted."—*Ex parte Ford* (1885), 16 Q. B. D. 305, at p. 307; 55 L. J. Q. B. 406, at p. 407, Lord Esher, M. R.

Golden Rule.

"The golden rule of construction is, that words are to be construed according to their natural meaning, unless such a construction would either render them senseless or would be opposed to the general scope and intent of the instrument; or, unless there be some cogent reason of convenience in favour of a different interpretation."—*Fowell v. Tranter* (1864), 3 H. & C. 458, at p. 461; 34 L. J. Ex. 6, at p. 7, Bramwell, B.

[N.B.—This is not quite the same as Lord Wensleydale's golden rule stated in *Grey v. Pearson* (1857), 6 H. L. C. 61, at p. 106; 26 L. J. h. 473, at p. 481 (see *ante*, p. 37).—AUTHOR.]

Latent Ambiguity.

A latent ambiguity is where the words of the contract are free from ambiguity in themselves but difficult as to their application to the external circumstances.

Evidence dehors the contract is admissible to explain a latent ambiguity.

“A latent ambiguity is, where you shew that words apply equally to two different things or subject-matters, and then evidence is admissible to show which of them was the thing or subject-matter intended.”—*Smith v. Jeffryes* (1846), 15 M. & W. 561, at p. 562; 15 L. J. Ex. 325, Alderson, B.

Patent Ambiguity.

A patent ambiguity is where there is a doubt on the face of the instrument.

Evidence to explain a patent ambiguity is not admissible.

Evidence of the private views or surmised, alleged, or secret intentions and known principles of the parties is never admissible.

“This is a case of *ambiguitas patens*, and according to the rules of law, evidence to explain such an ambiguity is not admissible. Where there is doubt on the face of the instrument, the law admits no extrinsic evidence to explain it.”—*Saunderson v. Piper* (1839), 5 Bing. N. C. 425, at p. 431, Tindal, C. J.

“In the first place there is no doubt that, not only where the language of the instrument is such as the Court does not understand, it is competent to receive evidence of the proper meaning of that language, as when it is written in a foreign tongue; but it is also competent where technical words or peculiar terms, or, indeed, any expressions are used, which at the time the instrument was written had acquired an appropriate meaning, either generally or by local usage, or amongst particular classes. The authorities in support of this position are *Att.-Gen. v. The Cast-Plate Glass Co.* [(1787), 1 Anstr. 39]; *Goblett v. Beechy* [(1829), 3 Sim. 24]; *Smith v. Wilson* [(1832), 3 B. & Ad. 728]; *Richardson v. Wilson* [(1833), 4 B. & Ad. 787]; and *Clayton v. Gregson* [(1836), 5 Ad. & E. 302]. This description of evidence is admissible, in order to enable the Court to understand the meaning of the words contained in the instrument itself, by themselves, and without

reference to the extrinsic facts on which the instrument is intended to operate.”—*Shore v. Wilson* (1842), 9 Cl. & F. 355, at p. 555, Parke, B.

“The general rule I take to be, that where the words of any instrument are free from ambiguity in themselves, and where external circumstances do not create any doubt or difficulty as to the proper application of those words to claimants under the instrument, or the subject-matter to which the instrument relates, such instrument is always to be construed according to the strict, plain, common meaning of the words themselves; and that in such case evidence *dehors* the instrument, for the purpose of explaining it according to the surmised or alleged intention of the parties to the instrument is utterly inadmissible. If it were otherwise, no lawyer would be safe in advising upon the construction of a written instrument, nor any party in taking under it: for the ablest advice might be controlled and the clearest title undermined if, at some future period, parol evidence of the particular meaning which the party affixed to his words, or of his secret intention in making the instrument, or of the objects he meant to take benefit under it, might be set up to contradict or vary the plain language of the instrument itself.

“The true interpretation, however, of every instrument being manifestly that which will make the instrument speak the intention of the party at the time it was made, it has always been considered as an exception, or perhaps, to speak more precisely, not so much an exception from, as a corollary to, the general rule above stated that, where any doubt arises upon the true sense and meaning of the words themselves, or any difficulty as to their application under the surrounding circumstances, the sense and meaning of the language may be investigated and ascertained by evidence *dehors* the instrument itself; for both reason and common sense agree that by no other means can the language of the instrument be made to speak the real mind of the party. Such investigation does of necessity take place in the interpretation of instruments written in a foreign language; in the case of ancient instruments where, by the lapse of time and change of manners, the words have acquired in the present age a different meaning from that which they bore when originally employed: in cases where terms of art or science occur; in mercantile contracts which in many instances use a peculiar language employed by those only who are conversant in trade and commerce; and in other instances

in which the words, besides their general common meaning, have acquired by custom or otherwise a well-known peculiar idiomatic meaning in the particular country in which the party using them was dwelling, or in the particular society of which he formed a member, and in which he passed his life. In all these cases evidence is admitted to expound the real meaning of the language used in the instrument, in order to enable the Court or judge to construe the instrument, and to carry such real meaning into effect.

“But whilst evidence is admissible in these instances for the purpose of making the written instrument speak for itself, which without such evidence would be either a dead letter, or would use a doubtful tongue, or convey a false impression of the meaning of the party, I conceive the exception to be strictly limited to cases of the description above given, and to evidence of the nature above detailed; and that in no case whatever is it permitted to explain the language of a deed by evidence of the private views, the secret intentions, or the known principles of the party to the instrument, whether religious, political, or otherwise, any more than by express parol declarations made by the party himself, which are universally excluded; for the admitting of such evidence would let in all the uncertainty before adverted to: it would be evidence which, in most instances, could not be met or countervailed by any of an opposite bearing or tendency, and would in effect cause the secret, undeclared intention of the party to control and predominate over the open intention expressed in the deed.”—*Ibid.*, at pp. 565, 566, Tindal, C. J.

Part IV.—DEEDS.

	PAGE
Presumption respecting the Making of Deeds	63
Construction should be favourable—most agreeable to the Intention	64
Date and Delivery	66
Time	67
Punctuation and Brackets	67
Intention of Parties	67
Inconsistent Parts of Deed	67
Deed operating Two Ways	69
Words, how construed	69
General and Special Words	70
Exceptions	72
Operative Part and Recitals	73
Covenants—	
Definition of	76
Express or Implied	78
Construed against Covenantor	79
Dependent and Independent	82
Conditions Precedent	84
Restrictive	85
Real and Personal	85
Joint and Several	86
For Another	88
Repugnancy	88
Legal and Illegal Parts	89
Matters referred to	90
Erroneous Additions	90
Alterations	90
Releases	91
Argument of Inconvenience	92
Contemporanea expositio	92

Presumption respecting the Making of Deeds.

Deeds are presumed to be made with great caution, forethought, and advice.

“I must not, however, omit, that in devises by last will and testament (which, being often drawn up when the party is *inops consilii*, are always more favoured in construction than formal deeds, which are presumed to be made with great caution, forethought, and advice). . . .”—2 *Bl. Com.* p. 172.

The Construction of Deeds should be favourable.

The construction of deeds ought to be favourable and as near to the apparent intent of the parties as possibly may be, and as the law will permit.

Too much regard is not to be had to the natural and proper signification of words and sentences to prevent the simple intention of the parties from taking effect.

False English will not make a deed void, if the intent of the parties plainly appears.

Insensible words may be rejected.

“It is a known maxim in law, that *benigne faciendæ sunt interpretationes chartarum ut res magis valeat quam pereat*. There is another, that *verba intentioni et non e contra debent inservire*.

“It is said in our books that the construction of deeds ought to be favourable and as near to the apparent intent of the parties as possibly may be, and as the law will permit.

“That too much regard is not to be had to the natural and proper signification of words and sentences to prevent the simple intention of the parties from taking effect; for that the law is not nice in grants, and therefore it doth often transpose words contrary to their order to bring them to the intent of the parties. For neither false *Latin* nor false *English* will make a deed void, if the intent of the parties doth plainly appear. I have collected these rules and maxims from *Littleton, Plowden, Coke, Hobart, and Finch*, persons of the greatest authority. But they are themselves so full of justice and good sense, that they do not want any authority to support them, and I do not know that they were ever yet controverted.

“On the foundation of these rules, whenever it is necessary to give an opinion upon the doubtful words of a deed, the first thing we ought to inquire into is, what was the intention of the parties. If the intent be as doubtful as the words, it will be of no assistance at all. But if the intent of the parties be plain and clear, we ought, if possible, to put such a construction on the doubtful words of a deed, as will best answer the intention of the parties, and reject that construction which manifestly tends to overturn and destroy it. I admit that though the intent of the parties be never so clear, it cannot take place contrary to the rules of law, nor can we put words in a deed which are not there, nor

put a construction on the words of a deed directly contrary to the plain sense of them. But where the intent is plain and manifest, and the words doubtful and obscure, it is the duty of the judges (and this is that *astutia* which is so much commended by Lord *Hobart*, p. 277, in the case of the Earl of *Clanrickard*) to endeavour to find out such a meaning in the words as will best answer the intent of the parties."—*Parkhurst v. Smith* (1741, 1742), Willes Reps. 327, at p. 332, Willes, C. J.

[N.B.—This case is also reported under the name of *Smith v. Packhurst*, in 3 Atk. 135, where the judgment is not so full as in the above report. See *infra*.]

"First, it is a maxim that such a construction ought to be made of deeds, *ut res magis valeat quam pereat*, that the end and design of the deeds should take effect rather than the contrary.

"Another maxim is that such a construction should be made of the words in a deed, as is most agreeable to the intention of the grantor; the words are not the principal things in a deed, but the intent and design of the grantor; we have no power indeed to alter the words or to insert words which are not in the deed, but we may and ought to construe the words in a manner the most agreeable to the meaning of the grantor, and may reject any words that are merely insensible; these maxims, my Lords, are founded upon the greatest authority—Coke, Plowden, and Lord Chief Justice Hale, and the law commends the *astutia*, the cunning of judges in construing words in such a manner as shall best answer the intent; the art of construing words in such a manner as shall destroy the intent may show the ingenuity of counsel, but is very ill becoming a judge."—*Smith v. Packhurst* (1741, 1742), 3 Atk. 135, at p. 136, Willes, C. J.

"Undoubtedly the generally received principle of law is, that the party who makes any instrument should take care so to express the amount of his own liability, as that he may not be bound beyond what it was his intention that he should be; and, on the other hand, that the party who receives the instrument and parts with his goods on the faith of it, should rather have a construction put upon it in his favour, because the words of the instrument are not his, but those of the other party."—*Mayer v. Isaac* (1840), 6 M. & W. 605, at p. 612; 9 L. J. Ex. 225, at p. 226, Alderson, B.

B.

F

Date and Delivery.

A deed has no operation until delivery.

When a deed is dated, the date is the date of delivery and of its execution until the contrary appears.

When a deed is undated or has an impossible date, the word date must mean delivery.

A deed is taken to speak from the time of its execution, and not from the date apparent on the face of it.

The date of a deed is only prima facie evidence of the time when it was made.

"A deed has no operation until delivery, and there may be cases in which, *ut res valeat*, it is necessary to construe date, delivery. Where there is no date, or an impossible date, that word must mean delivery. But where there is a sensible date, that word in other parts of the deed means the day of the date, and not of the delivery."—*Styles v. Wardle* (1825), 4 B. & C. 908, at p. 911, Bayley, J.

"Now the rule uniformly acted upon from the time of *Clayton's Case* [5 Rep. 1] to the present day is, that a deed or other writing must be taken to speak from the time of the execution, and not from the date apparent on the face of it. That date is indeed to be taken *prima facie* as the true time of execution; but as soon as the contrary appears, the apparent date is to be utterly disregarded."—*Browne v. Burton* (1847), 5 D. & L. 289, at p. 292; 17 L. J. Q. B. 49, at p. 50, Patteson, J., delivering the judgment of the Court.

"It is conceded that, if *Potez v. Glossop* [(1848), 2 Ex. 191] is good law, the memorandum is admissible. Now, though some inconvenience might arise from the rule there laid down, we cannot help seeing that more would occur if no effect were given to the date appearing on the face of the document. It is only *prima facie* evidence of the time when it was made; and it is quite open to the party against whom it is offered to show fraud and misrepresentation."—*Malpas v. Clements* (1850), 19 L. J. Q. B. 435, at p. 437, Lord Campbell, C. J.

"In *Jayne v. Hughes* [(1854), 10 Ex. 430; 24 L. J. Ex. 115], evidence was admitted to show that a deed (a more solemn instrument, if possible, even than a will) was wrongly dated."—*Refell v. Refell* (1866), L. R. 1 P. & M. 139, at p. 142; 35 L. J. P. 121, Sir J. P. Wilde.

(See also *ante*, p. 40.)

Time.

Greenwich or Dublin Mean Time.

Statutes (Definition of Time) Act, 1880, 43 & 44 Vict. c. 9
(2nd August, 1880).

Sect. 1. "Whenever any expression of time occurs in any Act of Parliament, deed, or other legal instrument, the time referred [*sic*] shall, unless it is otherwise specifically stated, be held, in the case of Great Britain, to be Greenwich mean time, and in the case of Ireland, Dublin mean time."

(See also *ante*, pp. 41, 53.)

Punctuation and Brackets.

"By putting stops, or using the parenthesis, as pointed out by the plaintiff's counsel (at p. 49), it becomes perfectly clear: and we know that no stops are ever inserted in Acts of Parliament, or in deeds; but the Courts of Law in construing them must read them with such stops as will give effect to the whole."—*Doe d. Willis v. Martin* (1790), 4 T. R. 39, at p. 65, Lord Kenyon, C. J.

Intention of Parties.

Inconsistent Parts of Deed.

Deeds shall operate according to the intention of the parties.

The intention is to be collected from the whole context and subject-matter of the deed, so as to make one entire and consistent construction of the whole.

Where there are inconsistent parts, effect ought to be given to that part which is calculated to carry into effect the real intention, and that part which would defeat it ought to be rejected.

"Such construction is always to be made of a deed that all the words (if possible) agreeable to reason and conformable to law, may take effect according to the intent of the parties without rejecting of any, or by any construction to make them void."—1 *Coke*, p. 233, Part I., 95b (*Shelley's Case*).

"But surely it is a rule, both in law and equity, so to construe the whole deed or will as that every clause should have its effect."—*Butler v. Duncombe* (1719), 1 P. Wms. 449, at p. 457, Parker, L. C.

"The rules laid down in respect of the construction of deeds are founded in law, reason, and common sense: That they shall

operate according to the intention of the parties, if by law they may: and if they cannot operate in one form, they shall operate in that which by law will effectuate the intention."—*Goodtitle v. Bailey* (1777), 2 Cowp. 597, at p. 600, Lord Mansfield, C. J.

"It is a true rule of construction that the sense and meaning of the parties in any particular part of an instrument may be collected *ex antecedentibus et consequentibus*; every part of it may be brought into action in order to collect from the whole one uniform and consistent sense, if that may be done."—*Barton v. Fitzgerald* (1812), 15 East 530, at p. 541, Lord Ellenborough, C. J.

"According to the authority of *Browning v. Wright* [(1799), 2 B. & P. 13, at p. 22], covenants ought to be construed with due regard to the intention of the parties as it is to be collected from the whole context of the instrument, so as to make one entire and consistent construction of the whole."—*Sicklemore v. Thistleton* (1817), 6 M. & S. 9, at p. 12, Lord Ellenborough, C. J.

"I agree that in construing this covenant we are to look to the subject-matter of the contract, and to consider all the terms of the deed; I admit that a positive covenant may sometimes be controlled or qualified by other clauses in the deed."—*Saward v. Anstey* (1825), 2 Bing. 519, at p. 522, Best, C. J.

"It is a good rule of construction that deeds should be construed so as to give effect to the intention of the parties."—*Evans v. Vaughan* (1825), 4 B. & C. 261, at p. 266, Abbott, C. J.

"As the different parts of the deed are inconsistent with each other, the question is, to which part effect ought to be given. There is no doubt that, applying the approved rules of construction to this instrument, effect ought to be given to that part which is calculated to carry into effect the real intention, and that part which would defeat it should be rejected."—*Walker v. Giles* (1848), 6 C. B. 662, at p. 702; 18 L. J. C. P. 323, at p. 330, Wilde, C. J.

"One suggestion is, to reject the proviso altogether, as wholly inconsistent with the previous trusts, according to the well-known rule, that in deeds containing two clauses absolutely inconsistent with each other, the latter is to be rejected, being, in that respect, the converse of the rule which obtains in construing wills. This is an expedient to which the Court will very reluctantly, in any case, have recourse, and never, unless absolutely compelled to do so, having exhausted every other means in its power to reconcile apparent inconsistencies."—*Bush v. Watkins* (1851), 14 Beav. 425, at p. 432, Sir John Romilly, M. R.

Deed operating Two Ways.

If a deed can operate two ways, that consistent with the intent should have effect given to it.

The plaintiff should be put in the least profitable position and the defendant in the least burthensome.

The construction that renders the deed valid should be adopted.

"If a deed can, therefore, operate two ways, one consistent with the intent and the other repugnant to it, Courts will be ever astute so to construe it as to give effect to the intent; and the construction, I need not add, must be made on the entire deed."—*Solly v. Forbes* (1820), 2 B. & B. 38, at pp. 48, 49, Dallas, C. J.

This rule was referred to and applied by Wilde, C. J., in the case of *Ford v. Beech* (1848), 11 Q. B. 852, at p. 870; 17 L. J. Q. B. 114, at p. 117.

"Generally speaking, where there are several ways in which the contract might be performed, that mode is adopted which is the least profitable to the plaintiff and the least burthensome to the defendant."—*Cockburn v. Alexander* (1848), 6 C. B. 791, at p. 814; 18 L. J. C. P. 74, at p. 83, Maule, J.

"But suppose we import into this case the rule that where a doubt exists and one mode of construction renders a contract valid and the other invalid, the former should be adopted."—*Steele v. Hoe* (1849), 19 L. J. Q. B. 89, at p. 93, Erle, J.

"We think that the words in their ordinary acceptation are capable of expressing a past or a concurrent consideration; and as upon one construction the instrument is void, the other is to be adopted which makes it valid."—*Ibid.*, Patteson, J., delivering the judgment of the Court.

"It seems to me that there would be monstrous injustice if the husband, having suggested one construction of the deed in the old suit and succeeded on that footing, were allowed to turn round and win the new suit upon a diametrically opposite construction of the same deed. It would be playing fast and loose with justice if the Court allowed that."—*Gandy v. Gandy* (1885), 30 Ch. D. 57, at p. 82; 54 L. J. Ch. 1154, at p. 1163, Bowen, L. J.

Words how Construed.

The words of a deed are to be construed like the words of any other writing.

"The same sense is to be put upon the words of a contract in

an instrument under seal as would be put upon the same words in any instrument not under seal; for the same intention must be collected from the same words of a contract in writing, whether with or without a seal.”—*Seddon v. Senate* (1810), 13 East 63, at p. 74, Lord Ellenborough, C. J.

“It is equally a settled rule of law, where ambiguous expressions are used, though you are not at liberty to prove by their declarations what the parties meant, you are not only at liberty, but you are driven to supply yourself with evidence to know what is the meaning of such expressions. If I have to decide on the meaning of a deed, in which some technical word, some word of art, of which I may be ignorant, is used, I must have recourse to dictionaries and lexicons, in order that they may instruct me.”—*The Att.-Gen. v. Drummond* (1842), 1 Dru. & Warr. 353, at p. 368, Sugden, L. C.

“The words of a deed are to be construed like those of any other writing, according to the ordinary use and application of them.”—*Bain v. Cooper* (1842), 9 M. & W. 701, at p. 708; 11 L. J. Ex. 325, at p. 327, Lord Abinger, C. B.

General and Special Words.

Ejusdem Generis Doctrine.

General words of a deed are primâ facie to be taken in their usual sense.

General words of a deed are to be restrained by the other parts of a deed, if the intent so to restrain them be apparent.

Where special words are followed by general words; the general words are primâ facie to be taken in their usual sense unless the reasonable construction requires them to be used in a sense limited to things ejusdem generis with the special words. (See ante, p. 32.)

Where general words are followed by special words, the special words limit the general words.

If the particular words exhaust the whole genus, the general word refers to some larger genus.

“The third and the principal reason is upon a maxim and principle of the law, *scil. quando carta continet generalem clausulam, posteaque descendit ad verba specialia, quæ clausulæ generali sunt consentanea, interpretanda est carta secundum verba specialia.* The same rule almost word for word is put and agreed on both sides in 7 Ed. III., 10 a, *Margery Mortimer’s Case* [Lit. Rep. 345; Hob. 172],

scil., 'where a deed speaks by general words, and afterwards descends to special words, if the special words agree to the general words, the deed shall be intended according to the special words.'"

—4 *Coke*, p. 449, Part VIII., 154b (*Altham's Case*).

"Another rule or principle in law, *scil.*, *generalis clausula non porrigitur ad ea quæ antea specialiter sunt comprehensa*: and therefore, when the deed at the first contains special words and afterwards concludes in general words, both words, as well general as special, shall stand; and it is well said in 35 H. VIII., Dyer, 56, subsequent words may qualify and abridge, but not destroy, the generality of the words precedent."—4 *Coke*, p. 450, Part VIII., 154b.

"From all the cases upon this subject it appears to be determined, that however general the words of a covenant may be if standing alone, yet if, from other covenants in the same deed, it is plainly and irresistibly to be inferred that the party could not have intended to use the words in the general sense which they import, the Court will limit the operation of the general words. The question, therefore, always has been, whether such an irresistible inference does arise? for if such an inference does arise from concomitant covenants they will control the general words of an independent covenant in the same deed."—*Hesse v. Stevenson* (1803), 3 B. & P. 565, at pp. 574, 575, Lord Alvanley, C. J., delivering the judgment of the Court.

"I have admitted, and again still admit, the general rule to be that the general words of a deed are to be restrained by the other parts of a deed, if the intent so to restrain them be apparent; yet I think it would be of the most dangerous consequence if the judges of the land were to permit themselves (which they have no right to do) to exercise vague conjectures about the hardship of cases, and to consider ingeniously what the parties must have meant, when the words used are clear and precise, admitting of no ambiguity at all; and when the mode, which the plaintiff points out, gives to every branch of the covenant a clear and determinate meaning. This would be to make a new deed for the parties, not to pronounce upon the contract which they have made for themselves."—*Nind v. Marshall* (1819), 1 B. & B. 319, at p. 338, Park, J.

"General words following specific words are ordinarily construed as limited to things *ejusdem generis* with those before enumerated."—*Harrison v. Blackburn* (1864), 17 C. B. N. S. 678, at p. 690; 34 L. J. C. P. 109, at p. 112, Erle, C. J.

"That case [*Reg. v. Payne* (1866), L. R. 1 C. C. 27; 35 L. J. M. C. 170] falls within the rule, that if the particular words exhaust the whole *genus*, the general word must refer to some larger *genus*."—*Fenwick v. Schmalz* (1868), L. R. 3 C. P. 313, at p. 315; 37 L. J. C. P. 78, at p. 80, Willes, J.

"It is to be observed that the rule admits, as every rule of construction of documents must admit, as it is after all but a working canon to enable us to arrive at the meaning of the particular document—it admits of being qualified by the contents of the document itself, and there are many classes of cases in which it is obvious that the rule would have to bend."—*Earl of Jersey v. Guardians of Poor of Neath Poor Law Union* (1889), 22 Q. B. D. 555, at pp. 561, 562; 58 L. J. Q. B. 573, at p. 577, Bowen, L. J.

"Where you find the word 'whatsoever' following, as it does, upon certain substantives, it is often intended to repel, and in this case does effectually repel, the implication of the so-called doctrine of *ejusdem generis*, which, I think, has often been urged for the sake of giving not the true effect to the contracts of parties, but a narrower effect than they were intended to have."—*Ibid.*, at p. 566; L. J. at p. 578, Fry, L. J.

"Nothing can well be plainer than that to show that *prima facie* general words are to be taken in their larger sense, unless you can find that in the particular case the true construction of the instrument requires you to conclude that they are intended to be used in a sense limited to things *ejusdem generis* with those which have been specifically mentioned before."—*Anderson v. Anderson*, [1895] 1 Q. B. 749, at p. 753; 64 L. J. Q. B. 457, at p. 459, Lord Esher, M. R.

Exceptions.

"His lordship [Lord Kenyon, C. J.] then observed, that the general mode of construing deeds to which there are exceptions, is to let the exception control the instrument as far as the words of it extend and no further; and then upon the case being taken out of the letter of the exception, the deed operates in full force."—*Bouring v. Elmslie* (1790), 7 T. R. 216, note (a).

"It is a rule of construction, that where there is a grant and an exception out of it, the words of the exception are to be considered as the words of the grantor, and to be construed in favour of the grantee."—*Bullen v. Denning* (1826), 5 B. & C. 842, at p. 850, Holroyd, J.

Operative Part and Recitals.

When the operative part of a deed is clear it cannot be controlled by the recitals or other parts of the deed.

When the operative part of a deed is ambiguous, or goes beyond the recitals, it may be controlled by the recitals and other parts of the deed.

When the words of the operative part of a deed are general, they may be controlled by the recitals or other parts of the deed.

If both the recitals and the operative part are clear, but they are inconsistent with each other, the operative part is preferred.

“If the operative part of a deed be doubtfully expressed, there the recital may safely be referred to as a key to the intention of the parties; but where the operative part of the deed uses language which admits of no doubt, it cannot be controlled by the recital.”—*Bailey v. Lloyd* (1829), 5 Russ. 330, at p. 344, Sir John Leach, M. R.

“When the words in the operative part of a deed of conveyance are clear and unambiguous, they cannot be controlled by the recitals or other parts of the deed. On the other hand, when those words are of doubtful meaning, the recitals and other parts of the deed may be used as a test to discover the intention of the parties, and to fix the true meaning of those words.”—*Walsh v. Trevanion* (1850), 15 Q. B. 733, at p. 751; 19 L. J. Q. B. 458, at p. 462, Patteson, J., delivering the judgment of the Court.

“It is true that the Courts have held—and the authorities are very numerous on this subject, I will just state their result, they may be found in almost every text-book on conveyancing—that you cannot control clear words of conveyance by words of recital. That is one canon undoubtedly. But the expression ‘clear words of conveyance’ is subject to interpretation. For instance, the doctrine is as applicable to releases as to anything else, and the exception will be found to be always, that general words are not within that description of clear words of conveyance which cannot be controlled by the recital.”—*Rooke v. Lord Kensington* (1856), 2 K. & J. 753, at p. 769; 25 L. J. Ch. 795, at p. 799, Sir W. Page Wood, V.-C.

“I do not dispute the proposition which was argued, that if you find in a settlement recitals indicating various parcels enumerated, from whence it is to be inferred, from reading the recitals alone, that these parcels, and these alone, are to be included in and made

subject to the provisions of the deed, but yet you find that in the operative part of the deed one or two of these parcels are omitted, the Court may be of opinion, upon the construction of the deed, that the parcels, which are omitted in the operative part, are omitted by mistake, and are not included in the provisions of the deed. And the converse of that proposition is also true; parcels may be included in the operative part of the deed which the recitals and the rest of the deed show to have been inserted there by mistake. There are several cases to that effect, and amongst them the well-known case, before Lord Mansfield, of *Moore v. Magrath* [(1774), 1 Cowper, 9].”—*Barratt v. Wyatt* (1862), 30 Beav. 442, at p. 443, Sir J. Romilly, M. R.

“It was argued, that the covenant ought to be limited by the recital, and it certainly ought, if there were any ambiguity about it.”—*Selby v. Crystal Palace Gas Co.* (1862), 30 Beav. 606, at p. 612, Sir J. Romilly, M. R.

“It is of the greatest consequence to keep distinct the different parts of deeds, and to give to recitals and to the operative part their proper effects. I have always held, that where the recitals and the operative part of a deed are at variance, the operative part must be officious, and the recitals inofficious. I do not say inoperative, for the recitals may be useful in explaining ambiguities, but I cannot give to them such effect as to introduce a new covenant into the deed.”—*Young v. Smith* (1865), L. R. 1 Eq. 180, at p. 183; 35 Beav. 87, at p. 90, Sir J. Romilly, M. R.

“I had to consider the whole of this subject in the case of *Rooke v. Lord Kensington* [(1856), 2 K. & J. 753; 25 L. J. Ch. 795], and I am quite satisfied, after having heard the able argument of Mr. Turner, even upon the authorities he has cited, that, where there is a manifest discrepancy between the recital and the conveyance, the recital being clear as to what was intended to be conveyed, and the conveyance going beyond the recital, the conveyance will have to be restricted. No doubt that rule has more frequently been held to apply to the case of releases than of any other deed; but that does not arise from any difference in principle, but simply because the inconsistency is found in releases more frequently than in other deeds.”—*Jenner v. Jenner* (1866), L. R. 1 Eq. 361, at pp. 364, 365; 35 L. J. Ch. 329, Sir W. Page Wood, V.-C.

“Another thing which I think we may consider settled by authority is, that where the words of a covenant are ambiguous and

difficult to deal with, we may resort to the recitals to see whether they throw any light on its meaning.”—*In re Michell's Trusts* (1878), 9 Ch. D. 5, at p. 9, Jessel, M. R.

“The rule is, that a recital does not control the operative part of a deed, where the operative part is clear.”—*Daves v. Tredwell* (1881), 18 Ch. D. 354, at p. 358, Jessel, M. R.

“The true rule is given in the language of Lord Hatherley in *Rooke v. Lord Kensington* [(1856), 2 K. & J. 753, at p. 769; 25 L. J. Ch. 795, at p. 799], ‘that you cannot control clear words of conveyance by words of recital,’ but he goes on to point out that ‘the exception will be found to be always, that general words are not within that description of clear words of conveyance which cannot be controlled by recital.’ And in *Jenner v. Jenner* [(1866), L. R. 1 Eq. 361; 35 L. J. Ch. 329], where the authorities are collected and examined, the same learned judge acted upon that principle, relying upon Lord Ellenborough’s words in *Payler v. Homersham* [(1815), 4 M. & S. 423, at p. 426], ‘the general words of a release may be restrained by the particular recital. Common sense requires that it should be so, and in order to construe any instrument truly, you must have regard to all its parts, and most especially to the particular words of it.’”—*Danby v. Coutts & Co.* (1885), 29 Ch. D. 500, at p. 514; 54 L. J. Ch. 577, at p. 579, Kay, J.

“From that case [*Moore v. Magrath* (1774), 1 Cowp. 9] I get in addition the leading principle laid down, that the recitals are the key to what is intended to be done by the deed, and that though general words may be put in to guard against an accidental omission, yet in the absence of any indication of a larger meaning, the deed must be held to refer to estates or things of the same nature or description with those which have been already mentioned.”—*Crompton v. Jarratt* (1885), 30 Ch. D. 298, at p. 307; 54 L. J. Ch. 1109, at p. 1115, North, J.

“Although it is true, as Mr. Wolstenholme said, that words of general description like these are introduced in order to carry into the assurance anything which by mistake has been omitted, yet in my opinion the things to be swept in must, *prima facie*, be of the same class and nature as those which have been specifically enumerated.”—*Ibid.*, at p. 316; L. J. at p. 1119, Cotton, L. J.

“Now there are three rules applicable to the construction of such an instrument (an assignment).

“If the recitals are clear and the operative part is ambiguous, the recitals govern the construction.

"If the recitals are ambiguous, and the operative part is clear, the operative part must prevail.

"If both the recitals and the operative part are clear, but they are inconsistent with each other, the operative part is to be preferred."—*Ex parte Daves* (1886), 17 Q. B. D. 275, at p. 286, Lord Esher, M. R.

Ibid., at p. 289, Lopes, L. J., stated same rules in a slightly different way.

Covenants.

Definition of a Covenant.

A covenant is a clause of agreement contained in a deed (whether by recital, provision, or exception), whereby either party stipulates for the truth of certain facts, or binds himself to perform, or forbear doing, something or other.

"A covenant is the agreement or consent of two or more by deed in writing sealed and delivered, whereby one of the persons doth promise to the other that something is done already, or shall be done afterwards. And he that makes the covenant is called the covenantor; and he to whom it is made the covenantee."—*Shep. Touch.* p. 160.

"Any words in a deed, which show an agreement to do a thing, make a covenant: as if it be agreed by articles between A. and B. that stock shall be in hands of B. until a jointure be made, B. *solvendo proinde* the interest to A.; covenant lies against B. for interest."—*Comyns Dig. Covenant*, A 2.

[N.B.—Cited by Grove, J., in *Brookes v. Drysdale* (1877), 3 C. P. D. 52, at p. 57.]

"The word 'covenant' seems to be borrowed from the Latin *convenire* or *conventus*, which signifies a mutual agreement and accord, upon conditions propounded and accepted by the parties concerned. A covenant then is a mutual consent and agreement entered into between persons, whereby they stand bound each to the other to perform the conditions contracted and indented for. So that a covenant in this larger sense is the very same thing with a contract or bargain. But the word is generally taken in the law of England, and indeed is here considered, in a more restrained sense, and applied only to an agreement in writing under seal. By covenants, therefore, are meant those clauses of agreement contained in a deed, whereby either party stipulates for the truth of

certain facts, or binds himself to perform, or forbear doing, something or other."—2 *Bac. Abr.* p. 336, "Covenant."

"There needs not, in this case, formal and orderly words as 'covenant,' 'promise,' and the like, to make a covenant on which to ground an action of covenant, for a covenant may be had by any other words; and upon any part of an agreement in writing, in what words soever it be set down, for anything to be or not to be done, the party to or with whom the promise or agreement is made, may have this action upon the breach of the agreement."—*Shep. Touch.* p. 162.

"Neither the word covenant, nor the word agreement, is necessary to an action of covenant, but a deed under hand and seal, testifying an agreement."—*Holles v. Carr* (1676), 3 Swans. 638, at p. 647, Lord Nottingham's MSS.

"The Court, however, must look at the whole of this instrument, and if they find it contains a clear agreement to do any act, whether in the way of covenant, provision, or even exception, then it is clear that an action of covenant may be maintained on the instrument."—*Saltoun v. Houstoun* (1824), 1 Bing. 433, at p. 444, Lord Gifford, C. J. (Cited by Lord Tenterden, C. J., in *Sampson v. Easterby* (1829), 9 B. & C. 505, at pp. 513, 514.)

"It is fully established that no precise form of words is necessary to constitute a covenant; 'any words in a deed which show an agreement to do a thing make a covenant' [Com. Dig. 'Covenant,' A. 2]; but it must be clear that they are meant to operate as an agreement, and not merely as words of condition or qualification [Com. Dig. 'Covenant,' A. 3]."—*Wolveridge v. Steward* (1833), 1 Cr. & M. 644, at p. 657, Denman, C. J.

"It will be found in those cases [*Sampson v. Easterby* (1829), 9 B. & C. 505; 6 Bing. 644; *Saltoun v. Houstoun* (1824), 1 Bing. 433; and several earlier cases] that, where the words of the recital or reference manifested a clear intention that the parties should do certain acts, the Courts have from these inferred a covenant to do such acts, and sustained actions of covenant for the nonperformance, as if the instruments had contained express covenants to perform them. . . . Where parties have entered into written engagements, with expressed stipulations, it is manifestly not desirable to extend that by any implications; the presumption is, that, having expressed some, they have expressed all the conditions by which they intend to be bound. . . . It is one thing for the Court to effectuate the intention of parties to the extent to which they may have, even imperfectly, expressed themselves, and another to add to

an instrument all such covenants as upon a full consideration the Court may deem fitting for the completing the intentions of the parties, but which they either purposely or unintentionally have omitted.”—*Aspdin v. Austin* (1844), 5 Q. B. 671, at p. 683; 13 L. J. Q. B. 155, at pp. 158, 159, Lord Denman, C. J., delivering the judgment of the Court.

“It is undoubted law, that no particular word, or form of words, is necessary to create a covenant; but that any words are sufficient for that purpose which show an intention to be bound by the deed to do or omit that which is the subject of the covenant: any such words are sufficient, and some such words are necessary, to make a covenant.”—*Rashleigh v. South Eastern Rail. Co.* (1851), 10 C. B. 612, at p. 632, Maule, J., delivering the judgment of the Court.

“There are several authorities that a recital in a deed may amount to a covenant. Thus, in *Severn v. Clerk* (1588) [1 Leo. 122], it was held that, where A. by his deed-poll, after reciting that he was possessed of certain lands for years of a certain term, assigned the same to S. G., with divers covenants, articles, and agreements in the said deed contained, it was held that this recital (‘whereas he was,’ &c.) amounted to an agreement within the meaning of the condition of the obligation, which was to perform all agreements in the deed [see also *Johnson v. Procter* (1611), Yelv. 175; and the remarks of Lord Eldon on that case, in his judgment in *Browning v. Wright* (1799), 2 B. & P. 13, at p. 25].”—*Farrall v. Hilditch* (1859), 5 C. B. N. S. 840, at p. 853; 28 L. J. C. P. 221, at pp. 223, 224, Williams, J., delivering the judgment of the Court.

Express or Implied Covenants.

An express covenant is one that is expressed by words in the deed.

An implied covenant is founded on the presumed intention of the parties, there being no such express covenant in the deed, and it must be a necessary implication.

Covenants are implied by force of various Acts of Parliament, e.g., 1 & 2 Vict. c. 20, s. 22; 8 & 9 Vict. c. 18, s. 132; 44 & 45 Vict. c. 41, s. 7.

“Covenants are distinguished into express and implied covenants—express, when they are expressed in a deed; implied, when the deed doth not express them, but the law doth make and supply them.”—2 *Bac. Abr.* “Covenant.”

“To charge a party with a covenant, it is not necessary that

there should be express words of covenant or agreement. It is enough if the intention of the parties to create a covenant be apparent."—*Courtney v. Taylor* (1843), 6 M. & G. 851, at p. 867, Tindal, C. J.

"An implied warranty, or, as it is called, a covenant in law, as distinguished from an express contract or express warranty, really is in all cases founded on the presumed intention of the parties, and upon reason. The implication which the law draws from what must obviously have been the intention of the parties, the law draws with the object of giving efficacy to the transaction and preventing such a failure of consideration as cannot have been within the contemplation of either side; and I believe if one were to take all the cases, and they are many, of implied warranties or covenants in law, it will be found that in all of them the law is raising an implication from the presumed intention of the parties, with the object of giving to the transaction such efficacy as both parties must have intended that at all events it should have."—*The Moorcock* (1889), 14 P. D. 64, at p. 68; 58 L. J. P. 73, at p. 75, Bowen, L. J.

"I have for a long time understood that rule to be (as to implying a stipulation) that the Court has no right to imply in a written contract any such stipulation, unless, on considering the terms of the contract in a reasonable and business manner, an implication necessarily arises that the parties must have intended that the suggested stipulation should exist. It is not enough to say that it would be a reasonable thing to make such an implication. It must be a necessary implication in the sense I have mentioned. In the case of *The Moorcock* [(1889), 14 P. D. 64, at p. 68; 58 L. J. P. 73], Bowen, L. J., laid down the principle upon which such implications must be made in terms which seem to me to be really an expansion of the terms I have used, and with which I entirely agree."—*Hamlyn & Co. v. Wood & Co.*, [1891] 2 Q. B. 488, at p. 491; 60 L. J. Q. B. 734, at pp. 735, 736, Lord Esher, M. R.

Covenants construed against Covenantor.

The words of a covenant are to be taken most strongly against the covenantor, due regard being paid to the intention of the parties as collected from the whole context of the deed. This rule ought to be applied only where other rules of construction fail.

"That the deed must be taken most strongly against him that

is the agent or contractor, and in favour of the other party, '*Verba fortius accipiuntur contra proferentem.*' As, if tenant in fee simple grants to anyone an estate for life, generally it shall be construed an estate for the life of the grantee. For the principles of self-preservation will make men sufficiently careful not to prejudice their own interest by the too extensive meaning of their words; and hereby all manner of deceit in any grant is avoided; for men would always affect ambiguous and intricate expressions, provided they were afterwards at liberty to put their own construction upon them. But here a distinction must be taken between an indenture and a deed-poll; for the words of an indenture, executed by both parties, are to be considered as the words of them both; for though delivered as the words of one party, yet they are not his words only, because the other party hath given his consent to every one of them. But in a deed-poll, executed only by the grantor, they are the words of the grantor only, and shall be taken most strongly against him. And, in general, this rule, being a rule of sound strictness and rigour, is the last to be resorted to, and is never to be relied upon, but where all other rules of exposition fail."—2 *Bl. Com.* p. 380.

"If there be a doubt upon the words, it is true that they are to be taken most strongly against the covenantor."—*Rubery v. Jervoise* (1786), 1 T. R. 229, at p. 234, Willes, J.

"It is certainly true that the words of a covenant are to be taken most strongly against the covenantor, but that must be qualified by the observation that a due regard must be paid to the intention of the parties as collected from the whole context of the instrument."—*Browning v. Wright* (1799), 2 B. & P. 13, at p. 22, Lord Eldon, C. J. (Cited by Lord Ellenborough, C. J., in *Sicklemore v. Thistleton* (1817), 6 M. & S. 9, at p. 12.)

"Then comes the general covenant in the words which have been mentioned; and by the well-known rule of law the words of a covenant are to be taken most strongly against the covenantor. I admit, however, that they may be restrained by other words in the deed, if we can see a clear intention to restrain them from the other parts of the deed. But it would be a very dangerous rule if it were to be applied to every case where ingenuity can show that by giving the natural meaning to the words of the general covenant, other words in other parts of the deed might be rendered nugatory. The intention, therefore, to restrain the general words,

as it is to be collected from the other parts of the deed, must clearly appear.”—*Barton v. Fitzgerald* (1812), 15 East 530, at p. 545, Bayley, J.

“For although the words of a covenant are to be construed according to the intent of the parties, yet they are to be taken most strongly against the party who stipulates.”—*Webb v. Plummer* (1819), 2 B. & Ald. 746, at p. 751, Holroyd, J.

“Now, I admit that although the maxim ‘*verba cartarum fortius accipiuntur contra proferentem*’ is to be qualified by this observation, that regard must be paid to the intention of the parties as it is to be collected from the whole context of the instrument, still I dare not reject words which the parties have chosen to introduce into their contract. I know, that in all the cases no word ought, if possible, to be rendered inoperative.”—*Nind v. Marshall* (1819), 1 B. & B. 319, at p. 335, Parke, J.

“It is a general rule that ambiguous words are to be taken most strongly against the covenantor.”—*Fowle v. Welsh* (1822), 1 B. & C. 29, at p. 35, Bayley, J.

“The principle of construction which has been so strenuously contended for, viz., that the terms of a grant are to be construed as favourably as possible for the grantee, the Court is not disposed to controvert.”—*In re Stroud* (1849), 8 C. B. 502, at p. 529; 19 L. J. C. P. 117, at p. 120, Wilde, C. J.

“The principle of construction of covenants is, that they are to be construed most strongly against the covenantor, and most beneficially in favour of the covenantee.”—*Warde v. Warde* (1852), 16 Beav. 103, at p. 105, Sir John Romilly, M. R.

“I had at first an inclination of opinion that, if the words were doubtful, and it could be construed in favour of the defendants, the general rule would be this, that, it being equivalent to a grant on the part of the vendor, the construction must be taken most strongly against the grantor. But, on the other hand, there is another rule of construction well established, namely, that it is right to give effect to every word, if it can reasonably and properly be done.”—*Patching v. Dubbins* (1853), Kay 1, at pp. 13, 14; 23 L. J. Ch. 45, at p. 48, Sir W. Page Wood, V.-C.

“The rule ‘*verba fortius accipiuntur contra proferentem*’ which, however, ought to be applied only where other rules of construction fail.”—*Lindus v. Melrose* (1858), 3 H. & N. 177, at p. 182; 27 L. J. Ex. 326, at p. 329, Coleridge, J., delivering the judgment of the Exchequer Chamber.

"As regards a maxim quoted by Mr. Christie, and which is to be found, I believe, in a great many text-books, and I am afraid also in a great many judgments of ancient date, and that is, that a grant, if there is any difficulty or obscurity as to its meaning, is to be read most strongly against the grantor, I do not see how, according to the now established rules of construction, as settled by the House of Lords in the well-known case of *Grey v. Pearson* [(1857), 6 H. L. Cas. 61; 26 L. J. Ch. 473], followed by *Roddy v. Fitzgerald* [(1858), 6 H. L. Cas. 823], and *Abbott v. Middleton* [(1858), 7 H. L. Cas. 68; 28 L. J. Ch. 110], that maxim can be considered as having any force at the present day. The rule is to find out the meaning of the instrument according to the ordinary and proper rules of construction. If we can thus find out its meaning, we do not want the maxim. If, on the other hand, we cannot find out its meaning, then the instrument is void for uncertainty, and in that case it may be said that the instrument is construed in favour of the grantor, for the grant is annulled."—*Taylor v. Corporation of St. Helens* (1877), 6 Ch. D. 264, at pp. 270, 271; 46 L. J. Ch. 857, at p. 859, Jessel, M. R.

Dependent and Independent Covenants.

Where mutual covenants go to the whole of the consideration on both sides, they are mutual conditions, the one precedent to the other.

Where a covenant goes only to part of the consideration on both sides, and a breach of such covenant may be paid for in damages, it is an independent covenant.

"The question is, Whether it be a condition precedent? and that depends not on any formal arrangement of the words, but on the reason and sense of the thing, as it is to be collected from the whole contract: whether of two things reciprocally stipulated to be done, the performance of the one in sense and reason depend upon the performance of the other. The rule was well laid down by Lord Mansfield in *Boone v. Eyre* [(1777), 1 H. Bl. 273, n.], that where mutual covenants go to the *whole* of the consideration on both sides, they are mutual conditions, the one precedent to the other; but where the covenants go only to a *part*, there a remedy lies on the covenant to recover damages for the breach of it; but it is not a condition precedent."—*Ritchie v. Atkinson* (1808), 10 East 295, at p. 306, Lord Ellenborough, C. J.

"Whatever confusion may prevail among the earlier cases on the subject of dependent and independent covenants, the rule seems now to be well understood, as ably and clearly laid down by Mr. Serjeant Williams in his note to *Pordage v. Cole* [1 Wms. Saund. 320b] namely, 'That where a covenant goes only to *part* of the consideration on both sides, and a breach of such covenant may be paid for in damages, it is an independent covenant.'"—*Carpenter v. Cresswell* (1827), 4 Bing. 409, at p. 411, Park, J.

"The rule has been established by a long series of decisions in modern times, that the question whether covenants are to be held dependent or independent of each other, is to be determined by the intention and meaning of the parties as it appears on the instrument, and by the application of common sense to each particular case; to which intention, when once discovered, all technical forms of expression must give way. And one of the means of discovering such intention has been laid down with great accuracy by Lord Ellenborough, in the case of *Ritchie v. Atkinson* [(1808), 10 East 295], to be this: 'that where mutual covenants go to the *whole* of the consideration on both sides, they are mutual conditions, the one precedent to the other; but where the covenants go only to a *part*, there a remedy lies on the covenant to recover damages for the breach of it, but it is not a condition precedent.'"—*Stavers v. Curling* (1836), 3 Bing. N. C. 355, at p. 368, Tindal, C. J.

"In the numerous cases on the subject, in which it has been laid down that the general rule is to construe covenants and agreements to be dependent or independent, according to the intent and meaning of the parties, to be collected from the instrument, and, of course, the circumstances legally admissible in evidence with reference to which it is to be construed, one particular rule well acknowledged is, that where a covenant or agreement goes to part of the consideration on both sides, and may be compensated in damages, it is an independent covenant or contract, . . . and the cases of *Campbell v. Jones* [(1796), 6 T. R. 570], and *Boone v. Eyre* [(1777), 1 H. Bl. 273, n.; 2 W. Bl. 1312], are instances of the application of the rule. But there it appears, as Mr. Serjeant Williams observes, in 1 Saund. 320d (and the Lord Chief Baron [Pollock], in delivering the judgment of this Court in *Ellen v. Topp* [(1851), 6 Ex. 424, at p. 441; 20 L. J. Ex. 241, at p. 245], adopts the observation), 'the reason of the decision in that and similar cases, besides the inequality of the damages, seems to

be that, where a person has received part of the consideration for which he entered into the agreement, it would be unjust that, because he had not the whole, he should, therefore, be permitted to enjoy that part without either payment or doing anything for it. Therefore, the law obliges him to perform the agreement on his part, leaving him to his remedy to recover any damage he may have sustained in not having received the whole consideration.'"
—*Graves v. Legg* (1854), 9 Ex. 709, at p. 716; 23 L. J. Ex. 228, at p. 231, Parke, B., delivering the judgment of the Court.

"These rules [laid down in the notes to *Pordage v. Cole* (1681), 1 Wms. Saund. 320] are not proposed for the purpose of absolutely determining the dependence or independence of covenants in all cases, but merely as furnishing a guide to the discovery of the intention of the parties. For, as Lord Kenyon said, in *Porter v. Shephard* [(1796), 6 T. R. 665, at p. 668], 'conditions are to be construed to be either precedent or subsequent, according to the fair intention of the parties, to be collected from the instrument; and technical words (if there be any to encounter such intention) should give way to that intention.'"
—*Roberts v. Brett* (1865), 11 H. L. Cas. 337, at p. 354; 34 L. J. C. P. 241, at p. 247, Lord Chelmsford.

"The Court must ascertain the intention of the parties, as is said by Parke, B., in delivering the judgment of the Court in *Graves v. Legg* [(1854), 9 Ex. 709, at p. 716; 23 L. J. Ex. 228, at p. 231], 'to be collected from the instrument and the circumstances legally admissible in evidence with reference to which it is to be construed.' He adds, 'one particular rule well acknowledged is, that where a covenant or agreement goes to part of the consideration on both sides, and may be compensated in damages, it is an independent covenant or contract.'"
—*Bettini v. Gye* (1876), 1 Q. B. D. 183, at p. 186; 45 L. J. Q. B. 209, at p. 212, Blackburn, J.

Conditions Precedent.

"There are no precise technical words required in a deed to make a stipulation a condition *precedent* or *subsequent*; neither doth it depend on the circumstance whether the clause is placed prior or posterior in the deed, so that it operates as a proviso or covenant. For the same words have been construed to operate as either the one or the other, according to the nature of the transaction."—*Hotham v. The East India Co.* (1787), 1 T. R. 638, at p. 645, Ashhurst, J., delivering the judgment of the Court.

"Now, whatever might have been the question if it had been raised whilst the agreement was executory, we are clearly of opinion that, the defendant having received a substantial portion of the consideration, it is no longer competent to him to rely upon the non-performance of that which might have been originally a condition precedent [*per* Parke, B., in *Graves v. Legg* (1854), 9 Ex. 709, at p. 716; 23 L. J. Ex. 228, at p. 231; *White v. Beeton* (1861), 7 H. & N. 42; 30 L. J. Ex. 373; and see the judgment of the Court in *Ellen v. Topp* (1851), 6 Ex. 424, at p. 441; 20 L. J. Ex. 241, at p. 245]. This doctrine is well and firmly established, and is in accordance with principles of common sense and justice."—*Carter v. Scargill* (1875), L. R. 10 Q. B. 564, at pp. 567, 568, Field, J., delivering the judgment of the Court (Cockburn, C. J., Quain and Field, JJ.).

Restrictive Covenants—Extension of.

"If a restrictive clause be in the first or last part of a sentence, or at the beginning of the first or at the end of the last sentence, which in good sense may be applied to the one and the other, then it shall extend to both sentences; but otherwise it is if such sentence be placed in the middle of one or two sentences."—*Gainsford v. Griffith* (1678), 1 Saund. 60 a.

"Where any sentence contains distinct covenants, and there are words of restriction either in the prefatory or concluding part, those words must be extended to every part of the sentence, unless the intention of the parties appears to require a contrary construction. This is laid down in 1 Saund. 60."—*Browning v. Wright* (1799), 2 Bos. & P. 13, at p. 27, Heath, J.

Partly Affirmative and partly Negative.

"Whether you regard it (the restrictive covenant) as an affirmative covenant with a negative element in it, or whether you regard it as split up, as it is here, into these two parts, partly affirmative and partly negative, that negative part can be properly enforced."—*Clegg v. Hands* (1890), 44 Ch. D. 503, at p. 522; 59 L. J. Ch. 477, at p. 484, Lindley, L. J.

Covenants Real and Personal—Defined.

"Covenants are also divided into real and personal. Covenants real are those which have for their object land or other real property, or something annexed thereto or connected therewith, and

which run with the land, so that he which hath the land hath the benefit, or is subject to the burden of the covenants. Covenants personal are those which do not run with the land, but of which the benefit or the burden goes with some particular person."—1 *Dav.* 5th ed. p. 88.

Covenants "are distinguished also into real and personal; real when they pass lands, or are annexed to and run with land; personal when they attach upon or run in the personalty, and charge or benefit some person in particular. Personal covenants, again, may be distinguished into such as are transitive or intransitive; intransitive, when the duty of performing them is limited to the covenantor himself; transitive, when it passes to his representatives."—2 *Bac. Abr. Covenant*.

Joint and Several Covenants.

A covenant will be construed to be joint or several according to the interest of the parties appearing upon the face of the deed, if the words are capable of that construction.

If the interest be joint, the action must be joint, although the words of the covenant be several.

If the interest be several, the action will be several, although the words of the covenant be primâ facie joint.

"But the implication or construction of law, where the words are ambiguous, or are left to the interpretation of law, will be, that the words have an import corresponding to the interest, so as to be joint when the interest is joint, and several when the interest is several; notwithstanding language which, under different circumstances, would give to the covenant a different effect."—1 *Wms. Saund.* ed. 1871, pp. 165, 166.

"The principle is well known, and fully established, that if the interest be joint, the action must be joint, although the words of the covenant be several; and if the interest be several, the covenant will be several, although the terms of it be joint."—*James v. Emery* (1818), 8 Taunt. 245, at p. 248, Gibbs, C. J.

"I think the correct rule is laid down by Gibbs, C. J., in *James v. Emery* [(1818), 8 Taunt. 245], with the qualification stated by Mr. Preston, in the note in Sheppard's Touchstone, p. 166. That rule is, that a covenant will be construed to be joint or several according to the interest of the parties appearing upon the face of the deed, if the words are capable of that construction; not that it

will be construed to be several by reason of several interests, if it be expressly joint. Suppose there were a covenant with A. and B. *jointly* that a certain thing should be done by the covenantor, both of those persons must sue. But where it appears upon the face of the deed that A. and B. have several interests, they must sue separately; for though the words be *prima facie* joint, they will be construed to be several, if the interest of either party appearing upon the face of the deed shall require that construction. That I take to be the true rule."—*Sorsbie v. Park* (1843), 12 M. & W. 146, at p. 158; 13 L. J. Ex. 9, at p. 11, Parke, B. (Cited by Cotton, L. J., in *Palmer v. Mallett* (1887), 36 Ch. D. 411, at p. 421; 57 L. J. Ch. 226.)

"There is no occasion to refer to the cases relating to the rule of construction as to covenants being joint or several according to the interest of the parties, which is perfectly well established. In the case of *Sorsbie v. Park* [(1843), 12 M. & W. 146; 13 L. J. Ex. 9], Lord Abinger and myself, on referring to the established rule as laid down by Lord Chief Justice Gibbs in the case of *James v. Emery* [(1818), 8 Taunt. 245; 2 Moore, 195], approved Mr. Preston's qualification and explanation of it in his edition of the Touchstone, p. 166, namely, that if the language of the covenant *was capable of being so construed*, it was to be taken to be joint or several according to the interest of the parties to it. Mr. Preston adds, that the general rule proposed by Sir Vicary Gibbs, and to be found in several books, would establish that there was a rule of law too powerful to be controlled *by any intention, however express*; and I consider such qualification to be perfectly correct, and at variance with no decided case, as it is surely as competent for a person, by express joint words, strong enough to make a joint covenant, to do one thing for the benefit of one of the covenantees, and another for the benefit of another, as it is to make a joint demise where it is for the benefit of one."—*Bradburne v. Botfield* (1845), 14 M. & W. 559, at p. 572; 14 L. J. Ex. 330, at pp. 332-3, Parke, B., delivering the judgment of the Court.

"The rule that covenants are to be construed according to the interest of the parties is a rule of construction merely, and it cannot be supposed that such a rule was ever laid down as could prevent parties, whatever words they might use, from covenanting in a different manner. It is impossible to say that parties may not, if they please, use joint words, so as to express a joint covenant, and thereby to exclude a several covenant, and that, because

a covenant may relate to several interests, it is therefore necessarily not to be construed as a joint covenant. If there be words *capable of two constructions*, we must look to the interest of the parties which they intended to protect, and construe the words according to that interest."—*Keightley v. Watson* (1849), 3 Ex. 716, at p. 722; 18 L. J. Ex. 339, at p. 341, Parke, B.

Covenant for Another.

One person may covenant for another.

"The Court said that it was impossible to contend that where one covenants for another he is not to be bound by it; the covenant being in *his own* name 'for himself, his heirs,' &c. There was nothing unusual or inconsistent in the nature of the thing that one should covenant to another that a third person should do a certain thing, as that he should go to Rome. The party to whom the covenant is made may prefer the security of the covenantor to that of his principal. Here the defendant covenants *for himself*, not in the name of his principal, and puts his own seal upon it. There is nothing against law in it, if he will bind himself for his principal. He probably consented to it upon an indemnity."—*Appleton v. Binks* (1804), 5 East 148, at p. 149.

Repugnancy in Deeds.

Where there is a repugnancy, the first words, clauses, or parts of a deed shall be received and the latter rejected.

A proviso may give the covenant a limited construction.

"The general rule is, that if there be a repugnancy, the first words in a deed, and the last words in a will, shall prevail."—*Doe, Lessee of Leicester and Others v. Biggs* (1809), 2 Taunt. 109, at p. 113, Mansfield, C. J.

"If the defendants have entered into a covenant which, to any extent, binds them personally, this proviso is at variance with such covenant, and consequently must be rejected as repugnant according to the authorities cited."—*Furnivall v. Coombes* (1843), 5 M. & G. 736, at p. 751; 12 L. J. C. P. 265, at p. 269, Tindal, C. J.

"It is said that the proviso qualifies the full extent of the covenant, and gives it a *limited* construction. If that had really been so, I should have thought the argument a sound one."—*Ibid.*, at p. 752; L. J. at p. 269, Erskine, J.

"The rule of law is clear, that, if there be two clauses or parts

of a deed repugnant the one to the other, the first part shall be received and the latter rejected, except there be some special reason to the contrary. That rule was applied to a release in the case of *Solly v. Forbes* [(1820), 2 B. & B. 38].—*Bateson v. Gosling* (1871), L. R. 7 C. P. 9, at p. 12, Willes, J.

“It is said that if you find a personal covenant followed by a proviso that the covenantor shall not be personally liable under the covenant, the proviso is repugnant and void. I agree that that is the law; but that by no means applies to a case where the proviso limits the personal liability under the covenant without destroying it, thus leaving a portion of the original covenant remaining; in that case the proviso is perfectly valid. There is no authority against that view. A distinction has always been taken between a proviso which is repugnant to the covenant and therefore void, and a proviso which can be incorporated in the covenant, and be made consistent with it.”—*Williams v. Hathaway* (1877), 6 Ch. D. 544, at p. 549, Jessel, M. R.

(See also the Conveyancing and Law of Property Act, 1881 (44 & 45 Vict. c. 41), s. 7, sub-s. 7, as to varying or extending covenants implied under that Act.)

Legal and Illegal Parts.

Where a deed contains legal and illegal parts, the deed is altogether void if the legal parts cannot be separated from the illegal parts; but if they can be severed the illegal parts may be rejected and the legal parts retained.

“It is unanimously agreed in 14 H. 8, 25, 26, &c., that if some of the covenants of an indenture, or of the conditions endorsed upon a bond, are against the law, and some good and lawful, that in this case, the covenants or conditions which are against the law are void *ab initio*, and the others stand good.”—6 Coke, p. 49, Part XI. 27 b (*Pigot's Case*).

“The general rule is that, when you cannot sever the illegal from the legal part of a covenant, the contract is altogether void; but where you can sever them, whether the illegality be created by statute or by the common law, you may reject the bad part and retain the good.”—*Pickering v. Ilfracombe Rail. Co.* (1868), L. R. 3 C. P. 235, at p. 250; 37 L. J. C. P. 118, at p. 123, Willes, J. (Adopted by Court of Appeal, Lord Esher, M. R., and Fry and Lopes, L. JJ., in *In re Burdett* (1888), 20 Q. B. D. 310, at p. 314; 57 L. J. Q. B. 263, at p. 264.)

Matters referred to.

Matters referred to are regarded as actually inserted in a deed.

“‘*Verba relata inesse videntur*,’ according to which we must consider it to be the same thing here as if the map or plan, which is there referred to, had been actually inserted in the deed.”—*Llewellyn v. Earl of Jersey* (1843), 11 M. & W. 183, at p. 189; 12 L. J. Ex. 243, at p. 246, Parke, B.

Erroneous Additions to Deeds.

Erroneous additions do not vitiate a deed.

“Then the other rule of law applies, that as soon as there is an adequate and sufficient definition, with convenient certainty, of what is intended to pass by a deed, any subsequent erroneous addition will not vitiate it, according to the maxim ‘*falsa demonstratio non nocet*.’”—*Llewellyn v. Earl of Jersey* (1843), 11 M. & W. 183, at p. 189; 12 L. J. Ex. 243, at p. 246, Parke, B.

Alterations in Deeds.

An alteration in a material point avoids a deed, unless the alteration is made with the privity of obligor and obligee.

An alteration in an immaterial point does not avoid a deed.

“It was resolved that when any deed is altered in a point material by the plaintiff himself, or by any stranger, without the privity of the obligee, be it by interlineation, addition, rasing, or by drawing of a pen through a line, or through the midst of any material word, that the deed thereby becomes void.

“So if the obligee himself alters the deed by any of the said ways, although it is in words not material, yet the deed is void; but if a stranger, without his privity, alters the deed by any of the said ways in any point not material, it shall not avoid the deed.”—6 Coke, p. 48 (*Pigot’s Case*), Part XI. 27 a.

“The whole deed may be considered as one entire transaction, operating, as to the different parties to it, from the time of the execution by each, but not perfect till the execution by all the conveying parties. I am of opinion that any alteration made in the progress of such a transaction still leaves the deed valid as to the parties previously executing it, provided such alteration has not affected the situation in which they stood.”—*Doe d. Lewis v. Bingham* (1821), 4 B. & Ald. 672, at p. 675, Bayley, J.

"This being the state of the authorities, we think we are not bound by the doctrine in *Pigot's Case* [11 Rep. at fol. 27 a], or the authority cited for it [*Dyer*, 261b]; and not being bound, we are certainly not disposed to lay it down as a rule of law that the addition of words which cannot possibly prejudice anyone, destroys the validity of the note. It seems to us repugnant to justice and common sense to hold that the maker of a promissory note is discharged from his obligation to pay it because the holder has put in writing on the note what the law would have supplied if the words had not been written."—*Aldous v. Cornwell* (1868), L. R. 3 Q. B. 573, at p. 579; 37 L. J. Q. B. 201, at p. 203, Lush, J., delivering the judgment of the Court (Cockburn, C. J., Blackburn and Lush, JJ.).

(See also *Pattinson v. Luckley* (1875), L. R. 10 Ex. 330; 44 L. J. Ex. 180.)

Releases.

A release is not to be construed as applying to something of which the party was ignorant at the time he executed it.

"If there be introductory matter, that will qualify the general words of the release."—*Lampon v. Corke* (1822), 5 B. & Ald. 606, at p. 611, Best, J.

"It is a principle, long sanctioned in Courts of Equity, that a release cannot apply, or be intended to apply, to circumstances of which a party had no knowledge at the time he executed it, and if that be so general in its terms as to include matters never contemplated the party will be entitled to relief."—*Lyall v. Edwards* (1861), 6 H. & N. 337, at p. 347; 30 L. J. Ex. 193, at pp. 196, 197, Pollock, C. B.

"The doctrine of the Courts of Equity is founded on the simple and convenient rule of justice, that a release is not to be construed as applying to something, of which the party was ignorant, and we have now to act on that doctrine in a Court of Law."—*Ibid.*, at p. 348; L. J. at p. 197, Wilde, B.

"The general words in a release are limited always to that thing or those things which were specially in the contemplation of the parties at the time when the release was given."—*London and South Western Rail. Co. v. Blackmore* (1870), L. R. 4 H. L. 610, at p. 623; 39 L. J. Ch. 713, at p. 720, Lord Westbury.

(See also *Turner v. Turner* (1880), 14 Ch. D. 829, at pp. 834, 835, Malins, V.-C.)

Argument of Inconvenience.

The argument of inconvenience is a very strong argument where the construction is ambiguous.

“Now I have always said, and I am repeating, I am afraid, what I have been compelled to repeat over and over again, that the argument of inconvenience is a very strong argument where the construction of a document is ambiguous—where it is fairly open to two constructions. Then the argument of inconvenience, like the argument of absurdity, may be used with great force; but when the construction is clear beyond controversy, it is no answer to say that there are some consequences of that construction which will cause inconvenience, and were probably not contemplated by the framers of the documents.”—*Bottomley's Case* (1880), 16 Ch. D. 681, at p. 686; 50 L. J. Ch. 167, at p. 170, Jessel, M. R.

Contemporanea Expositio.

“In the construction of ancient grants and deeds there is no better way of construing them than by usage, and *contemporanea expositio* is the best way to go by.”—*Att.-Gen. v. Parker* (1747), 3 Atk. 576, at p. 577, Lord Hardwicke.

“One of the most settled rules of law for the construction of ambiguities in ancient instruments is, that you may resort to contemporaneous usage to ascertain the meaning of the deed; tell me what you have done under such a deed, and I will tell you what that deed means.”—*Att.-Gen. v. Drummond* (1842), 1 Dr. & War. 353, at p. 368, Sugden, C.

Part V.—MERCANTILE DOCUMENTS.

	PAGE
Generally	93
Bill of Lading	94
Charterparty	94
Writing and print	95
Policy of Insurance	95
Warranty in a Policy	96
Rules for ascertaining amount of a Loss under a Policy	96

Generally.

Uniformity of construction should prevail in this country and its dependencies.

“We feel that it is extremely desirable that the law regulating the construction of mercantile contracts and the remedies for breach of them should, as much as possible, proceed on the same principle in all parts of the world, and especially that this uniformity should prevail in respect of this country and its dependencies.”—*Dimech v. Corlett* (1858), 12 Moore P. C. C. 199, at p. 229, Sir J. T. Coleridge, delivering the judgment of the Judicial Committee.

(See also *The City of Chester* (1884), 9 P. D. 182, *ante*, p. 26.)

Accepted construction should not be in the least altered.

“Now charterparties, bills of lading, and policies of marine-insurance are documents which do not materially differ from an ordinary daily form of each. As mercantile business has been enlarged they have differed from time to time, but they do not differ from day to day, and in their substantial structure, which is very peculiar, they are much the same as they have been from the beginning. Where documents are in daily use in mercantile affairs, without any substantial difference in form from time to time, it is most material that the construction which was given to them years ago, and which has from that time been accepted in the courts of law, and in the mercantile world, should not be in the least altered, because all subsequent contracts have been made on the faith of the decisions. Therefore, whether one thinks that one would oneself have come to the same conclusion as the judges did

in the beginning is immaterial. One ought to adhere strictly to the construction which has been put upon such documents. Moreover, if those documents, construed as the judges have construed them for many years, have also for many years been applied in a particular way to facts similar to those which are in question at this day in a cause, it is equally material, in my opinion, to adhere to that application, or else mercantile business becomes wholly uncertain.”—*Pandorf v. Hamilton* (1886), 17 Q. B. D. 671, at pp. 673, 674; 55 L. J. Q. B. 546, at p. 547, Lord Esher, M. R.

Bill of Lading.

A bill of lading expresses the terms of the contract between shipper and shipowner.

“The primary office and purpose of a bill of lading, although by mercantile law and usage it is a symbol of the right of property in the goods, is to express the terms of the contract between the shipper and the shipowner.”—*Glyn, Mills & Co. v. East and West India Dock Co.* (1882), 7 App. Cas. 591, at p. 596, Lord Selborne, L. C. (Cited in *Leduc v. Ward* (1888), 20 Q. B. D. 475, at p. 480; 57 L. J. Q. B. 379, at p. 381, by Lord Esher, M. R.)

Charterparty.

“It is to be borne in mind that we are here dealing with a mercantile instrument, in the interpretation of which we must look at the substance of the matter, and are not restrained to such nicety of construction as in the case with regard to conveyances, pleadings and the like.”—*Cockburn v. Alexander* (1848), 6 C. B. 791, at p. 814; 18 L. J. C. P. 74, at pp. 82, 83, Maule, J.

“It appears to me that this case [of a charter party] is to be determined by the general rule of construction, so often referred to as the golden rule, which is equally applicable to acts of parliament and to private contracts—viz., that the grammatical sense of the words must be adhered to, unless such a construction would be contrary to the expressed intention of the parties, or would involve some absurdity, repugnance, or inconsistency.”—*Gether v. Capper* (1855), 15 C. B. 696, at p. 706; 24 L. J. C. P. 69, at p. 71, Maule, J.

“Moreover, to use the words of Lord Ellenborough, in *Barker v. Hodgson* [(1814), 3 M. & S. 267, 270], the merchant is ‘the adventurer who chalks out the voyage, who is to furnish at all events the subject-matter out of which the freight is to accrue.’

He is, in most cases, as he certainly was in the present instance, the party best acquainted with the trade for which the ship is taken up, and with the difficulties which may impede the performance by him of his contract; words, therefore, in a charterparty, relaxing in his favour a clause by which an allowance to him of time for a specified object is in the interest of the ship precisely limited, must be read as inserted on his requirement, and construed at the least with this degree of strictness against him, that they shall not have put upon them an addition to their obvious meaning. Nevertheless, where the meaning is ambiguous, as it is in the present case, we think that it must be gathered from the surrounding circumstances to which the charterparty was intended to apply.”—*Hudson v. Ede* (1867), L. R. 2 Q. B. 566, at p. 578; 36 L. J. Q. B. 273, at p. 281, Blackburn, J., delivering the judgment of the Court (Cockburn, C. J., Blackburn, Mellor, and Shee, JJ.).

Writing and Print.

“In construing a charterparty no greater effect can be given to writing than to print, although a different rule may prevail with reference to policies of insurance. *Alsager v. St. Katharine Docks Co.* [(1845), 14 M. & W. 794; 15 L. J. Ex. 34].”—*Baumvoll Manufaktur Von Scheibler v. Gilchrest*, [1891] 2 Q. B. 310, at p. 317; 60 L. J. Q. B. 605, at p. 608, Charles, J.

Policy of Insurance.

“The same rule of construction which applies to all instruments applies equally to a policy of insurance (set out, *ante*, pp. 31, 32) . . . The only difference between policies of insurance and other instruments in this respect is, that the greater part of the printed language of them, being invariable and uniform, has acquired, from use and practice, a known and definite meaning, and that the words superadded in writing (subject indeed always to be governed in point of construction by the language and terms with which they are accompanied) are entitled, nevertheless, if there should be any reasonable doubt upon the sense and meaning of the whole, to have a greater effect attributed to them than to the printed words, inasmuch as the written words are the immediate language and terms selected by the parties themselves for the expression of their meaning, and the printed words are a general formula adapted equally to their case and that of all other contracting parties upon similar occasions and subjects.”—*Robertson v. French* (1803), 4 East 130, at pp. 135, 136, Lord Ellenborough, C. J. (Cited by Bowen, L. J., in *Hart v.*

Standard Marine Insurance Co. (1889), 22 Q. B. D. 499, at p. 501; 58 L. J. Q. B. 284, at p. 286.)

Warranty in a Policy.

“The first question in this case is what is the rule of construction to be adopted in the case of a warranty in a policy. Now the rule laid down in *Marshall on Marine Insurance* is, that a warranty, like every other part of the contract, is to be construed according to the understanding of merchants, and does not bind the insured beyond the commercial import of the words. This has been adopted by later writers, both American and English, and is a declaration that the words are not to be construed in the sense in which they would be used amongst men of science, but as they would be used in mercantile transactions.”—*Hart v. Standard Marine Insurance Co.* (1889), 22 Q. B. D. 499, at p. 500; 58 L. J. Q. B. 284, at p. 285, Lord Esher, M. R.

Rules for ascertaining Amount of a Loss under a Policy.

“The dispute thus raised is one with regard to the mode of ascertaining the amount of a loss under a policy in ordinary form, and of adjusting that amount when ascertained. Such disputes have for a long period been determined according to recognized rules. As many of the arguments presented to us seemed to trench violently on several of those rules, it appears to us advisable to state our view of the binding force of those rules, and the reasons why they have a binding and exclusive force. They are rules which originated either in decisions of the Courts upon the construction or on the mode of applying the policy, or in customs proved before the Courts so clearly or so often as to have been long recognized by the Courts without further proof. Since those decisions, and the recognition of those customs, merchants and underwriters have for many years continued to enter into policies in the same form. According to ordinary principle, then, the later policies must be held to have been entered into upon the basis of those decisions and customs. If so, the rules determined by those decisions and customs are part of the contract. And though a Court now might differ from the correctness of the rules as originally laid down, it must yet now act upon those rules as part of the contract or as agreed modes of carrying it out.”—*Lohre v. Aitchison* (1878), 3 Q. B. D. 558, at p. 561; 47 L. J. Q. B. 534, at pp. 535, 536, Brett, L. J., delivering the judgment of the Court. (Cited by Pearson, J., in *In re Rosher* (1884), 26 Ch. D. 801, at p. 822; 53 L. J. Ch. 722, at p. 731.)

Pt. VI.-MISCELLANEOUS INSTRUMENTS.

	PAGE
PATENTS	97
SPECIFICATION	97
PLEADINGS	102
DEFINED	102
PLEADING OVER... ..	102
HOW CONSTRUED	102
POWERS	104
INTENTION	104
NAKED POWERS	104

PATENTS.

Patents are to be construed as bargains between the inventor and the public.

“Lord Eldon lays down the principle so long ago as 1800. He says, patents are to be considered as bargains between the inventor and the public, to be judged of on the principles of good faith, by making a fair disclosure of the invention, and to be construed as other bargains. That is the principle which must be taken to be the sound principle.”—*Neilson v. Harford* (1841), Webs. Pat. Cas. 295, at p. 341, Alderson, B.

Specification.

A specification should be in the clearest and most unequivocal terms of which the subject is capable.

The construction of a specification is for the Court.

The specification is to be fairly supported by the Court.

The specification is to be construed like every other written instrument.

“I think that, as every patent is calculated to give a monopoly to the patentee, it is so far against the principles of law, and would be a reason against it, were it not for the advantages which the public derive from the communication of the invention after the

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expiration of the time for which the patent is granted. It is therefore incumbent on the patentee to give a specification of the invention in the clearest and most unequivocal terms of which the subject is capable. And if it appear that there is any unnecessary ambiguity affectedly introduced into the specification, or anything which tends to mislead the public, in that case the patent is void."—*Turner v. Winter* (1787), 1 T. R. 602, at p. 605, Ashhurst, J.

"In the construction of a patent, the Court is bound to read the specification so as to support it, if it can fairly be done."—*Russell v. Cowley* (1835), 1 C. M. & R. 864, at p. 876, Parke, B.

"Then we come to the question itself, which depends on the proper construction to be put on the specification. It was contended that of this construction the jury were to judge. We are clearly of a different opinion. The construction of all written instruments belongs to the Court alone, whose duty it is to construe all such instruments as soon as the true meaning of the words in which they are couched, and the surrounding circumstances, if any, have been ascertained as facts by the jury; and it is the duty of the jury to take the construction from the Court, either absolutely, if there be no words to be construed as words of art, or phrases used in commerce, and no surrounding circumstances to be ascertained; or conditionally when those words or circumstances are necessarily referred to them. Unless this were so, there would be no certainty in the law; for a misconstruction by the Court is the proper subject of redress in a Court of Error; but a misconstruction by the jury cannot be set right at all effectually."—*Neilson v. Harford* (1841), 8 M. & W. 806, at p. 823; 11 L. J. Ex. 20, at p. 25, Parke, B.

The specification ought to be construed according to its ordinary and proper sense, "unless there be something in the context to give it a different meaning, or unless the facts properly in evidence, and with reference to which the patent must be construed, should show that a different interpretation ought to be made."—*Elliott v. Turner* (1845), 2 C. B. 446, at p. 461; 15 L. J. C. P. 49, at p. 51, Parke, B.

"Is not the judge bound to know the meaning of all words in the English language, or, if they are used technically or scientifically, to inform his own mind by evidence, and then to determine the meaning?"—*Hills v. The London Gaslight Co.* (1857), 27 L. J. Ex. 60, at p. 63, Martin, B.

"Where the meaning of a document depends on facts *dehors* the document, those facts must be first ascertained, and then it is for the judge, no doubt, to determine the meaning."—*Ibid.*, at p. 64, Bramwell, B.

"Where *novelty* or *infringement* depends merely on the construction of the specification, it is a pure question of law for the judge; but where the consideration arises how far one machine, or a material part of one machine, imitates or resembles another in that which is the alleged invention, it generally becomes a mixed question of law and fact which must be left to the jury."—*Seed v. Higgins* (1860), 8 H. L. Cas. 550, at p. 561; 30 L. J. Q. B. 314, Lord Campbell, L. C.

"It is true, as a proposition of law, that the construction of a specification (like the construction of all other written instruments) belongs to the Court; but the specification of an invention contains generally, if not always, some technical terms, some phrases of art, some description of processes, which require the light to be derived from what are called surrounding circumstances. It is, therefore, an admitted rule of law, that the explanation of the words or technical terms of art, the phrases used in commerce, and the proof and results of the processes which are described (and in a chemical patent the ascertainment of chemical equivalents), that all these are matters of fact upon which evidence may be given, contradictory testimony may be adduced, and upon which, undoubtedly, it is the province and right of the jury to decide. But when those portions of a specification are abstracted, and made the subject of evidence, and therefore brought within the province of the jury, the direction to be given to the jury with regard to the construction of the rest of the patent, which is conceived in ordinary language, must be a direction as to the meaning of the patent upon the hypothesis or the basis of the jury arriving at a certain conclusion with regard to the meaning of those terms, the signification of those phrases, the truth of those processes, and the result of the technical procedure described in the specification. And so the rule is given by Parke, B., in delivering the judgment of the Court of Exchequer in the case, I think, of *Neilson v. Harford* [(1841), 8 M. & W. 806; 11 L. J. Ex. 20]."—*Hill v. Evans* (1862), 4 De G. F. & J. 288, at pp. 293, 294; 31 L. J. Ch. 457, at p. 460, Lord Westbury, L. C.

"The construction of a specification, like other written docu-

ments, is for the Court. If the terms used require explanation, as being terms of art or of scientific use, explanatory evidence must be given, and with its aid the Court proceeds to the office of construction."—*Simpson v. Holliday* (1866), L. R. 1 H. L. 315, at p. 320; 35 L. J. Ch. 811, at p. 816, Lord Chelmsford, L. C.

"With respect to the rules that govern the construction of specifications, they are the ordinary rules for the interpretation of written instruments, having regard especially to the fact that the specification must clearly fulfil the obligation imposed on the patentee by the proviso contained in all letters patents, viz., that the grant shall be void if the patentee shall not particularly describe and ascertain the nature of his invention, and in what manner the same is to be performed. It is therefore made a settled rule, that the specification must be so expressed as to be perfectly intelligible to a workman of ordinary knowledge, and it must follow that, if there be any obscurity or ambiguity in the specification which is likely to mislead, this ought not to be helped by any refined or secondary interpretation of the language."—*Simpson v. Holliday* (1866), 13 W. R. 577, at p. 578; L. R. 1 H. L. 315; 35 L. J. Ch. 811, at p. 817, Lord Cranworth.

"In the construction of a specification it appears to me that it ought not to be subjected to what has been called a benign interpretation or to a strict one. The language should be construed according to its ordinary meaning—the understanding of technical words being, of course, confined to those who are conversant with the subject-matter of the invention—and if the specification is thus sufficiently intelligible, it performs all that is required of it."—*Harrison v. Anderston Foundry Co.* (1876), 1 App. Cas. 574, at p. 581, Lord Chelmsford.

"It cannot be effectually contended that there is any principle to be applied to the construction of specifications which differs from that applicable to the construction of every written instrument whatever. Of course, in ascertaining the meaning of words, you endeavour to put yourself as much as possible in the position of the person using them."—*Adie v. Clark* (1876), 3 Ch. D. 134, at p. 143, James, L. J., delivering the judgment of the Court (James, L. J., Mellish, L. J., and Baggallay, J. A.).

"In construing the specification, we must construe it like all written documents, taking the words and seeing what is the meaning of those words when applied to the subject-matter; and in the

case of a specification, which is addressed not to the world at large, but to a particular class, for instance, skilled mechanics, possessing a certain amount of knowledge, it is material for the tribunal to put itself in the position of such a class, namely, skilled mechanics, and to see what the words of the specification mean when applied to such a subject as skilled mechanics would know, and, as the tribunal has now, by the admission of evidence or otherwise, put itself in a position to understand; and then to say what the words of the specification mean when applied to such a subject-matter."—*Clark v. Adie*, No. 2 (1877), 2 App. Cas. 423, at pp. 436, 437; 46 L. J. Ch. 598, at p. 607, Lord Blackburn.

"I have remarked before, in the case of *Hincks and Son v. Safety Lighting Co.* [(1876), 4 Ch. D. 607, at p. 612; 46 L. J. Ch. 185, at p. 187], that it is the duty of the judge to construe a specification fairly, with a judicial anxiety to support a really useful invention, if it can be supported upon a reasonable interpretation of the patent; or, as Mr. Aston said, that a judge is not to be astute to find flaws in small matters in a specification with a view to overthrow it."—*Plimpton v. Spiller* (1877), 6 Ch. D. 412, at p. 422, Jessel, M. R.

"I apprehend the duty of the Court is fairly and truly to construe the specification, neither favouring the one side nor the other, —neither putting an unfair gloss or construction upon the specification for the purpose of saving a patent if it is said that the patent is void, nor putting an unfair gloss or construction upon it in order to extend the patent and make it take in something which you may think was an unhandsome taking of the fruits of his invention from the patentee if it is not wholly an infringement of the patent."—*Dudgeon v. Thomson* (1877), 3 App. Cas. 34, at pp. 53, 54, Lord Blackburn.

"We ought if possible to construe a claim so as to support a patent."—*Needham v. Johnson* (1884), 1 R. P. C. 49, at p. 55, Brett, M. R.

"If any patent is capable of more constructions than one, the general rule would be applied that you would put upon it that construction which makes it a valid patent, rather than a construction which renders it invalid."—*Ibid.*, at p. 58, Lindley, L. J.

PLEADINGS.

Pleading Defined.

"Pleading in strictness is no more than setting forth that fact which in law shows the justness of the demand made by the plaintiff, or the discharge and defence made by the defendant."—6 *Bac. Abr. Pleadings*.

"The use of pleading is to reduce the matters in litigation to a single point."—*Douglas v. Patrick* (1790), 3 T. R. 683, at p. 684, Lord Kenyon, C. J.

"Every pleading shall contain, and contain only, a statement in a summary form of the material facts on which the party pleading relies for his claim or defence, as the case may be, but not the evidence by which they are proved."—*Rules of the Supreme Court, Ord. XIX. r. 4.*

Pleading over.

"Now, although in general in pleading, an equivocal expression is to be construed against the party using it, yet where the opposite party has pleaded over, that is an admission that the expression is to be taken in that sense which will support the previous pleading."—*Hobson v. Middleton* (1827), 6 B. & C. 295, at p. 302, Bayley, J.

How Construed.

Pleadings are to be reasonably construed, and according to the subject-matter.

When there is an ambiguity in the pleading, it is to be construed most strongly against the pleader.

"Interpreting the language of the declaration according to the subject-matter."—*Hallewell v. Morrell* (1840), 1 M. & G. 367, at p. 383, Tindal, C. J.

"It is a clear rule of law that if a declaration contains allegations capable of being understood in two senses, and if understood in one sense it will sustain the action, and in another it will not, after verdict it must be construed in the sense which will sustain the action."—*Emmens v. Elderton* (1853), 4 H. L. Cas. 624, at p. 678, Lord Truro.

"I think that there ought to be no distinction made in the mode of construing a plea, whether it comes before the Court on demurrer or on a motion to enter judgment *non obstante veredicto*. In either case, the plea ought to receive a reasonable construction. It may be when there is any ambiguity that it ought to be taken as much as possible against the party pleading it."—*Goldham v. Edwards* (1856), 25 L. J. C. P. 223, at p. 224, Pollock, C. B.

"But this rule [that pleadings are to be taken most strongly against the party pleading] does not apply to the pleading of matters which are peculiarly within the knowledge of the opposite party: *Hobson v. Middleton* [(1827), 6 B. & C. 295, at p. 302]. And with reference to this equitable plea, it may be observed, that the same exception to the rule that pleadings are to be taken most strongly against the party pleading is recognized in Courts of Equity. See Mitford on Pleading [5th ed.], pp. 45, 347."—*Murphy v. Glass* (1869), L. R. 2 P. C. 408, at p. 419, Lord Chelmsford, pronouncing the judgment of the Judicial Committee.

POWERS.

Intention.

"In the execution of powers, the material object to be attended to is the intention of the person creating the power; and that intention is to be collected from the words of the will, or other instrument giving the power, according to the ordinary and common acceptation of the words, and not according to any legal or technical exposition of them."—*Griffith v. Harrison* (1792), 4 T. R. 737, at pp. 748, 749, Ashhurst and Buller, JJ.

Naked Powers.

Must be taken strictly.

"This is the first time I have heard that the execution of naked powers should be construed more favourably than that of powers coupled with an interest. The rule of law is otherwise; because the party there in some measure parts with his own property, as a kind of dominion he has over the estate, those powers being construed liberally; but naked powers always strictly."—*Duke of Marlborough v. Lord Godolphin* (1750), 2 Ves. Sen. 61, at p. 79, Lord Hardwicke, L. C.

"It is true, naked powers must be taken strictly, both in Courts of law and in equity."—*Zouch v. Woolston* (1761), 1 Wm. Bl. 281, at p. 283, Lord Mansfield, C. J.

By whom a Naked Power given to several can be Exercised.

"It is settled, by repeated authorities, that where a naked power is given to several persons, it cannot be executed by the

survivors. It is a power, the execution of which is entrusted to several individual persons jointly, which can only be executed by them all, and if one of them should die the authority will survive. It is also equally well settled, that if the power be annexed to the office any persons who fill the office of executor will have also the power which is attached to that office."—*Brassey v. Chalmers* (1852), 16 Beav. 223, at p. 233, Sir John Romilly, M. R.

Part VII.—STATUTES.

SECTION I.

	PAGE
Statute defined	106
Canons and Rules of Construction	106
Statutes <i>primâ facie</i> Territorial	107
Statutes affecting Colonies	110

Statute Defined.

A statute is the will of the legislature enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal and commons in Parliament assembled. (See 8 Bac. Abr. tit. "Statute.")

Statutes made before the time of legal memory, viz., 1 Ric. I. (1189) are considered part of the common law, the leges non scriptæ, i.e., the statutes worn out by time. (Ibid.)

"It is said that the last will of a party is to be favourably construed, because the testator is *inops consilii*. That we cannot say of the legislature, but we may say that it is '*magnas inter opes inops*.'"—*Surtees v. Ellison* (1829), 9 B. & C. 750, at pp. 752, 753, Lord Tenterden, C. J.

Canons and Rules of Construction.

"The rules of construction of statutes are very like those which apply to the construction of other documents, especially as regards one crucial rule, viz., that, if it is possible, the words of a statute must be construed so as to give a sensible meaning to them. The

words ought to be construed *ut res magis valeat quam pereat*.”—*Curtis v. Stovin* (1889), 22 Q. B. D. 513, at p. 517; 58 L. J. Q. B. 174, at p. 175, Bowen, L. J.

“The Master of the Rolls [Lord Esher] has relied on a general canon of construction with regard to Acts of Parliament. I must say for myself that I have always thought it difficult to lay down beforehand canons of construction by reference to which the objects of future statutes are to be defined. It has always seemed to me that it is safer to abstain from imposing with regard to Acts of Parliament any further canons of construction than those applicable to all documents.”—*Lamplugh v. Norton* (1889), 22 Q. B. D. 452, at p. 459; 58 L. J. Q. B. 279, at p. 282, Bowen, L. J.

Statutes are *primâ facie* Territorial.

English statutes primâ facie apply to and bind all English subjects of the realm within the English dominions.

English statutes primâ facie apply to and bind all aliens within English jurisdiction.

“Every Act of Parliament must be understood to have the words ‘within the dominions’ inserted in it. An attempt was once made to make dealing in slaves a felony in every part of the world; but the opinion of all the legal authorities was, that an English Act of Parliament was binding within the realm of England only. If, indeed, the Act of Parliament had stated that all British subjects were to be bound, as is the case in some of the slave-dealing Acts, or as is the case in the royal marriage Act with respect to the descendants of George the Second, then the case is different; but where the enactment is general, as in the present case, it does not extend beyond the English dominions.”—*Rosseter v. Cahmann* (1853), 22 L. J. Ex. 128, at p. 129; 8 Ex. 361, Pollock, C. B.

“It being the plain and obvious rule in construing the Acts of any legislature that the legislature of each independent country must be supposed to deal with those subject-matters which are within its own control and jurisdiction. As Dr. Lushington expresses it in the case of *The Zollverein* [(1856), 2 Jur. N. S. 429; 1 Sw. 96, at p. 98]: ‘In looking to an Act of Parliament with reference to such a question as I am now discussing, viz., as to whether it is intended to apply to foreigners or not, I should, in endeavouring to ascertain the construction of the Act, always bear

in mind the power of the British legislature; for it is never to be presumed, unless the words are so clear that there can, by no possibility, be a mistake, that the British legislature exceeded that power which, according to the law of the whole world, properly belonged to it. The power of this country is to legislate for its own subjects all over the world, and as to foreigners within its jurisdiction, but no further."—*Cope v. Doherty* (1858), 4 K. & J. 367, at p. 375; 27 L. J. Ch. 600, at p. 601, Sir W. Page Wood, V.-C.

"I have always recognized the full force of this objection, that the British Parliament has no proper authority to legislate for foreigners out of its jurisdiction; and I especially did so in the case of *The Zollverein* [(1856), 2 Jur. N. S. 429; 1 Sw. 96, at p. 98]. No statute ought, therefore, to be held to apply to foreigners with respect to transactions out of British jurisdiction, unless the words of the statute are perfectly clear; but I never said that, if it pleased the British Parliament to make such laws as to foreigners out of the jurisdiction, courts of justice must not execute them; indeed, I said the direct contrary."—*The Amalia* (1863), 32 L. J. Ad. 191, at p. 192, Dr. Lushington.

"It appears to me that the whole question is governed by the broad, general, universal principle that English legislation, unless the contrary is expressly enacted, or so plainly implied, as to make it the duty of an English Court to give effect to an English statute, is applicable only to English subjects, or to foreigners who, by coming into this country, whether for a long or a short time, have made themselves during that time subject to English jurisdiction. Every foreigner who comes into this country, for however limited a time, is, during his residence here within the allegiance of the sovereign, entitled to the protection of the sovereign and subject to all the laws of the sovereign. But, if a foreigner remains abroad, if he has never come into this country at all, it seems to me impossible to imagine that the English legislature could have ever intended to make such a man subject to particular English legislation."—*Ex parte Blain* (1879), 12 Ch. D. 522, at p. 526, James, L. J.

"The governing principle is, that all legislation is *prima facie* territorial, that is to say, that the legislation of any country binds its own subjects and the subjects of other countries who, for the time, bring themselves within the allegiance of the legislating power. The English legislature has a right to make a bankruptcy statute which shall bind all its own subjects, and any foreigner

who for the time is in England, and does something there which the statute forbids. As long as he is in England he is under the allegiance of the Queen of England, and in the power of the English legislature. Therefore, it has been held, that if a foreigner, though not domiciled or permanently resident in this country, comes into England, and does, or omits to do, some act in England which the English legislature has declared to be an act of bankruptcy, then, by reason of that act of bankruptcy, done or suffered in England, he may be made a bankrupt in England. But, upon the ground of the limited power of the legislature of England to legislate, all the authorities have held that it is necessary that the act of bankruptcy should have been committed in England, if the person against whom the statute is invoked is a foreigner who is not domiciled in England.”—*Ibid.*, at p. 528, Brett, L. J.

“All we have to do is to interpret an Act of Parliament which uses a general word [‘debtor’], and we have to say how that word is limited, when of necessity there must be some limitation. I take it the limitation is this, that all laws of the English Parliament must be territorial—territorial in this sense, that they apply to, and bind, all subjects of the Crown who come within the fair interpretation of them, and also all aliens who come to this country, and who, during the time they are here, do any act which, on a fair interpretation of the statute as regards them, comes within its provisions. Of course it is not necessary that a person to be subject to an English Act should be domiciled here. If he is resident here temporarily, and does an act which comes within the intent and purview of a statute, he, as regards that statute, as does every alien who comes here in regard to all the laws of this realm, submits himself to the law, and must be dealt with accordingly. As regards an Englishman, a subject of the British Crown, it is not necessary that he should be here, if he has done that which the Act of Parliament says shall give jurisdiction, because he is bound by the Act, by reason of his being a British subject, though, of course, in the case of a British subject not resident here, it may be a question on the construction of the Act of Parliament whether that which, if he had been resident here, would have brought him within the Act, has that effect when he is not resident here. As regards a British subject, whether he is here or not, he can be made bankrupt, if the Act of Parliament has declared that, in the events which have happened, he can be made bankrupt. But, as regards foreigners, there is, *prima facie*, no right to bind them if

they are not here.”—*Ex parte Blain* (1879), 12 Ch. D. 522, at pp. 531, 532, Cotton, L. J.

(See also *In re Pearson*, [1892] 2 Q. B. 263; 61 L. J. Q. B. 585.)

Statutes are not intended to do that which is against the comity of nations.

“If the meaning of an Act is doubtful, it is a reason for not putting a particular interpretation upon it that that interpretation would violate the comity of nations.”—*Leroux v. Brown* (1852), 22 L. J. C. P. 1, at p. 3; 12 C. B. 801, Maule, J.

“The English Parliament cannot be supposed, merely by reason of its having used general words, to be intending to do that which is against the comity of nations. It is true that if we come to the conclusion that this has been intentionally done, we must carry out the law and leave to the government of the country the task of answering objections, but unless that is perfectly clear we ought to limit the words so as to make them reasonable and proper.”—*Colquhoun v. Brooks* (1888), 21 Q. B. D. 52, at pp. 57, 58, Lord Esher, M. R.

“It seems to me that, unless parliament expressly declares otherwise, in which case, even if it should go beyond its own rights as regards the comity of nations, the Courts of this country must obey the enactment, the proper construction to be put on general words used in an English Act of Parliament is, that Parliament was dealing only with such persons or things as are within the general words and also within its proper jurisdiction, and that we ought to assume that Parliament (unless it expressly declares otherwise) when it uses general words is only dealing with persons or things over which it has properly jurisdiction.”—*Colquhoun v. Heddon* (1890), 25 Q. B. D. 129, at pp. 134, 135; 59 L. J. Q. B. 465, at p. 467, Lord Esher, M. R.

Statutes affecting Colonies.

A confirmed act of the local legislature lawfully constituted, whether in a settled or conquered colony, has, as to matters within its competence and the limits of its jurisdiction, the operation and force of sovereign legislation, though subject to be controlled by the Imperial Parliament.

“There is even greater reason for holding sacred the prerogative of the Crown to constitute a local legislature in the case of a settled

colony, where the inhabitants are entitled to be governed by English law, than in that of a conquered colony, where it is only by grace of the Crown that the privilege of self-government is allowed, though where once allowed it cannot be recalled. In colonies distant from the mother-country to which writs to return members to the Imperial Parliament do not run, it is essential, both for the due government of the country in dealing with matters best understood upon the spot, and with emergencies which do not admit of delay, and also for giving subjects there resident the benefit of a voice, by their representatives, in the councils by which they are taxed and governed, that the Crown should have the power of creating a local Parliament. . . . We are satisfied that it is sound law, and that a confirmed act of the local legislature lawfully constituted, whether in a settled or conquered colony, has, as to matters within its competence and the limits of its jurisdiction, the operation and force of sovereign legislation, though subject to be controlled by the Imperial Parliament.”—*Phillips v. Eyre* (1870), L. R. 6 Q. B. 1, at pp. 18—20; 40 L. J. Q. B. 28, at p. 35, Willes, J., delivering the judgment of the Exchequer Chamber.

Imperial statutes affecting a colony.

“If a consideration of the scope and object of a statute leads to the conclusion that the legislature intended to affect a colony, and the words used are calculated to have that effect, they should be so construed.”—*Callender, Sykes & Co. v. Colonial Secretary of Lagos and Davies*, [1891] A. C. 460, at pp. 466, 467; 60 L. J. P. C. 33, at p. 37, Lord Hobhouse, delivering the judgment of the Judicial Committee.

An English Act of Parliament cannot be applied to Colonial or Foreign Property.

“It seems to me that an inquiry of a much more important kind, and one which bears very closely upon the present question, is whether there is any general rule as to the extent to which English Acts of Parliament dealing with property in general are to be treated as applying to foreign property. I use the word ‘foreign’ as including colonial property, and I mean by it property which, whether situate in England or elsewhere, is not at the time to which the discussion relates English property, as distinguished from foreign and colonial property. It seems to me that there is such authority, and that it runs in a well-defined

current. 'It is quite clear,' says Lord Westbury, 'that you cannot apply an English Act of Parliament to foreign property whilst it remains foreign property.' [*Att.-Gen. v. Campbell* (1872), L. R. 5 H. L. 524, at p. 530; 41 L. J. Ch. 611, at pp. 613, 614.]—" *Colquhoun v. Brooks* (1887), 19 Q. B. D. 400, at pp. 406, 407, Wills, J.

In all parts of the Empire where English law prevails legal interpretation should be as nearly as possible the same.

"Their lordships think the Court in the colony might well have taken this decision [*Diggle v. Higgs* (1877), 2 Ex. D. 422; 46 L. J. Ex. 721] as an authoritative construction of the statute. It is the judgment of the Court of Appeal, by which all the Courts in England are bound, until a contrary determination has been arrived at by the House of Lords. Their lordships think that in colonies where a like enactment has been passed by the legislature, the colonial Courts should also govern themselves by it. . . . It is of the utmost importance that in all parts of the Empire where English law prevails, the interpretation of that law by the Courts should be as nearly as possible the same."—*Trimble v. Hill* (1879), 5 App. Cas. 342, at pp. 344, 345; 49 L. J. P. C. 49, at p. 51, Sir Montague E. Smith, delivering the judgment of the Judicial Committee.

SECTION II.

	PAGE		PAGE
Citing Statutes	112	Headings	122
Title of a Statute	114	Marginal Notes	124
Date and Commencement ...	115	Punctuation and Brackets ...	125
Preamble—		Sections	125
Defined	118	Proviso	126
Enacting Part and Preamble	118	Saving Clause	126
Recitals	122	Schedules... ..	126

Citing Statutes.

It was formerly sufficient to cite the year of the reign in which a statute was made, and, if more than one, the session, chapter, and section, according to the copy of the statute printed by the Queen's printer, or to the copy contained in the reports of the Commissioners of Public Records.

Reference may now be made either to the short title, if any, or to the regnal year, &c.

References in Acts passed after 1st January, 1890, are to the revised edition, if any; otherwise, if passed before George I., to the edition prepared under the direction of the Record Commission, in other cases to the Queen's Printer's or Stationery Office Copy.

Lord Brougham's Act, 1850 (13 & 14 Vict. c. 21) [10th June, 1850] (repealed, 52 & 53 Vict. c. 63, s. 41).

Sect. 3.—“Be it enacted, that in any Act, when any former Act is referred to, it shall be sufficient, if such Act was made before the seventh year of Henry the Seventh [22nd August, 1492],

“To cite the year of the King's reign in which it was made, and where there are more statutes than one in the same year the statute, and where there are more chapters than one the chapter :

“And if such Act referred to was made after the fourth year of Henry the Seventh [22nd August, 1489],

“To cite the year of the reign, and where there are more statutes or sessions than one in the same year the statute or session (as the case may require), and where there are more chapters or sections than one the chapter or section or chapter and section (as the case may require),

“Without reciting the title of such Act, or the provision of such section, so referred to ;

“And the reference in all cases shall be made according to the copies of statutes printed by the Queen's printer, or to the copies thereof contained in the reports of the Commissioners of Public Records :

“Provided that where it is only intended to amend or repeal any portion only of such section it shall be necessary still either to recite such portion or to set forth the matter or thing intended to be amended or repealed.”

Interpretation Act, 1889 (52 & 53 Vict. c. 63) [30th August, 1889].

Sect. 35.—(1.) “In any Act, instrument, or document, an Act may be cited by reference to the short title, if any, of the Act, either with or without a reference to the chapter, or by reference to the regnal year in which the Act was passed, and where there are more statutes or sessions than one in the same regnal year, by reference to the statute or the session, as the case may require, and where there are more chapters than one, by reference to the chapter, and any enactment may be cited by reference to the section or subsection of the Act in which the enactment is contained.

(2.) “Where any Act passed after the commencement of this Act.

B.

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[1st January, 1890] contains such reference as aforesaid, the reference shall, unless a contrary intention appears, be read as referring, in the case of statutes included in any revised edition of the statutes purporting to be printed by authority, to that edition, and in the case of statutes not so included, and passed before the reign of King George the First, to the edition prepared under the direction of the Record Commission; and in other cases to the copies of the statutes purporting to be printed by the Queen's Printer, or under the superintendence or authority of Her Majesty's Stationery Office.

(3.) "In any Act passed after the commencement of this Act [1st January, 1890], a description or citation of a portion of another Act shall, unless the contrary intention appears, be construed as including the word, section, or other part mentioned or referred to as forming the beginning and as forming the end of the portion comprised in the description or citation."

Short Titles Act, 1892 (55 Vict. c. 10) [20th May, 1892].

Sect. 1.—(1.) "Each of the Acts mentioned in the First Schedule to this Act may, without prejudice to any other mode of citation, be cited by the short title therein mentioned in that behalf.

(2.) "Each of the groups of Acts mentioned in the Second Schedule to this Act may, without prejudice to any other mode of citation, be cited by the collective titles therein mentioned in that behalf.

(3.) "If any Act passed after this Act is directed, as to the whole or any part thereof, to be read with any of the groups of Acts mentioned in the Second Schedule to this Act, that group shall be construed as including that Act or part, and, if the collective title of the group states the first and last years of the group, the year in which that Act is passed shall be substituted for the last year of the group, and so on as often as a subsequent Act or part is added to the group.

Sect. 2. "This Act may be cited as the Short Titles Act, 1892."

Title of a Statute.

The title of a statute may be looked at in order to remove ambiguity in the words of the statute.

"The conciseness of the title shall not control the body of the Act. The title is no part of the law itself. One reading is often

sufficient for it.”—*The King v. Williams* (1758), 1 W. Bl. 93, at p. 95, Mansfield, C. J., *et tot. cur.*

“The title cannot be resorted to in construing the enactments.”—*Hunter v. Nockolds* (1850), 1 Mac. & G. 640, at p. 651; 19 L. J. Ch. 177, at p. 178, Lord Cottenham, L. C.

“The title of the Act is always on the roll.”—*Sutton v. Sutton* (1882), 22 Ch. D. 511, at p. 513; 52 L. J. Ch. 333, Jessel, M. R.

“In Maxwell on the Interpretation of Statutes, the author (at p. 34) states that the title of an Act of Parliament is not regarded by the Court as forming part of the Act. In Sedgwick’s Interpretation of Statutory and Constitutional Law, at p. 50, it is said that the title may be resorted to in order to remove ambiguities. In *Chance v. Adams* [(1697), 1 Ld. Raym. 77], Treby, C. J., said that ‘the title of the Act was but a new usage, and began about the 11th of Hen. VII.’ In *Mills v. Wilkins* [(1704), 6 Mod. 62], Holt, C. J., thought that the title was no part of the law or enacting part of the statute. But there is considerable authority in favour of reading the title to get at the object of the Act. In *Stradling v. Morgan* [(1560), Plow. 199], the title of the Act was relied on in deciding whether the word ‘receivers’ in 7 Edw. VI. c. 1, applied to receivers generally, or was confined to the king’s receivers only. So in *The King v. Cartwright* [(1791), 4 T. R. 490], Buller, J., in deciding that assaults upon revenue officers, which could be prosecuted in any Court under sect. 26 of 9 Geo. II. c. 35, only extended to assaults upon them *quâ* government officers, said that the intention of the legislature might be gathered from other parts of the Act, which was made for the sake of the revenue, ‘as its title imported.’ In *The King v. Marks* [(1802), 3 East 157], the Court looked at the title to determine the scope of the Act under consideration. I think, therefore, there is ample authority for saying that the title of an Act may be looked at in order to remove any ambiguity in the words of the Act.”—*Coomber v. Justices of Berks* (1882), 9 Q. B. D. 17, at pp. 32, 33; 51 L. J. Q. B. 297, at p. 304, Huddleston, B.

“The title of a statute does not go for much in construing it; but I do not know that it is absolutely to be disregarded.”—*Kenrick v. Lawrence* (1890), 25 Q. B. D. 99, at p. 104, Wills, J.

Date and Commencement.

The indorsement, immediately after the title, of the day, month, and year when the statute passed and received the royal

assent was (after 8th April, 1793) part of the Act, and the date of its commencement when no other commencement was therein provided.

After 1st January, 1890, "commencement" means the time at which the Act comes into operation.

An Act passed after 1st January, 1890, expressed to come into operation on a particular day, comes into operation on the expiration of the previous day.

"These arguments were urged at the bar of the House of Lords in the case of *The Att.-Gen. and Panter* [(1772), 6 Bro. P. C. 553]; but the House, by the unanimous opinion of the judges, determined that the rule of law that, where no specific day is mentioned in an Act of Parliament from which it is to take effect, it commences by legal relation from the first day of the sessions, had been so long settled that it could not be shaken."—*Latless v. Holmes* (1792), 4 T. R. 660, at p. 661, *per cur.*

An Act to prevent Acts of Parliament from taking Effect from a Time prior to the passing thereof. 33 Geo. III. c. 13 (1792—1793).

"Whereas every Act of Parliament in which the commencement thereof is not directed to be from a specific time doth commence from the first day of the session of Parliament in which such Act is passed: And whereas the same is liable to produce great and manifest injustice: For remedy whereof be it enacted, and it is hereby enacted by the King's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal and commons, in this present Parliament assembled, and by the authority of the same, that the Clerk of the Parliaments shall indorse (in English) on every Act of Parliament which shall pass after the 8th day of April, 1793, immediately after the title of such Act, the day, month, and year when the same shall have passed and shall have received the royal assent; and such indorsement shall be taken to be a part of such Act, and to be the date of the commencement where no other commencement shall be therein provided."

"At the time when that resolution was come to [viz., in the case of *Att.-Gen. v. The Chelsea Water Works Co.* (1731), Fitzgibbon 195], if two Acts of Parliament, passed in the same session, were repugnant, it was not possible to know which of them received the royal assent

first, for there was then no indorsement on the roll of the day on which bills received the royal assent, and all Acts passed in the same session were considered as having received the royal assent on the same day, and were referred to the first day of the session. Now, however, it is known on what day each bill receives the royal assent, it being provided by the 33 Geo. III. c. 13 (1792—1793), that a certain parliamentary officer [the Clerk of the Parliaments] shall indorse [in English] on every Act of Parliament [which shall pass after the 8th day of April, 1793, immediately after the title of such Act] ‘the day, month, and year when the same shall have passed and shall have received the royal assent; and such indorsement shall be taken to be a part of such Act, and to be the date of its commencement where no other commencement shall be therein provided.’”—*The King v. The Justices of Middlesex* (1831), 2 B. & Ad. 818, at p. 821, Lord Tenterden, C. J., delivering the judgment of the Court.

“At common law all statutes passed in a session of Parliament had relation back to the first day of the session, unless some other day was appointed for the Act coming into operation. This relation was productive of most serious consequences, many instances of which are found in the books; and in the thirty-third year of the reign of George III. an Act was passed which required the Clerks of the Parliaments to indorse on every Act the day, month, and year when the same received the royal assent, and enacted that such indorsement should be taken as part of the Act, and should be the date of its commencement where no other commencement was provided.”—*Tomlinson v. Bullock* (1879), 4 Q. B. D. 230, at p. 232; 48 L. J. M. C. 95, at p. 96, Lush, J.

Interpretation Act, 1889 (52 & 53 Vict. c. 63) [30th August, 1889].

“Commencement.”

Sect. 36.—“(1) In this Act, and in every Act passed either before or after the commencement of this Act [1st January, 1890], the expression ‘commencement,’ when used with reference to an Act, shall mean the time at which the Act comes into operation.

“(2) Where an Act passed after the commencement of this Act [1st January, 1890], or any Order in Council, order, warrant, scheme, letters patent, rules, regulations, or byelaws made, granted, or issued, under a power conferred by any such Act, is expressed to come into operation on a particular day, the same shall be con-

strued as coming into operation immediately on the expiration of the previous day."

The coming into operation of instruments made under a power conferred by an Act.

Interpretation Act, 1889 (52 & 53 Vict. c. 63) [30th August, 1889].

Sect. 37. "Where an Act passed after the commencement of this Act [1st January, 1890], is not to come into operation immediately on the passing thereof, and confers power to make any appointment, to make, grant, or issue any instrument, that is to say, any Order in Council, order, warrant, scheme, letters patent, rules, regulations, or byelaws, to give notices, to prescribe forms, or to do any other thing for the purposes of the Act, that power may, unless the contrary intention appears, be exercised at any time after the passing of the Act, so far as may be necessary or expedient for the purpose of bringing the Act into operation at the date of the commencement thereof, subject to this restriction, that any instrument made under the power shall not, unless the contrary intention appears in the Act, or the contrary is necessary for bringing the Act into operation, come into operation until the Act comes into operation."

Preamble.

Defined.

A preamble is a recital of some inconveniences.

"There was a time when statutes were made without preambles; and the preamble of a statute is no more than a recital of some inconveniences, which does not exclude any other, for which a remedy is given by the enacting part of the statute."—7 *Bac. Abr. Statute (I.)* 2.

Enacting Part and Preamble.

Where the enacting part is unambiguous, the preamble cannot be resorted to to control it.

Where the enacting part is ambiguous, the preamble can be resorted to to explain it.

"The preamble of the Act has been always thought material in the construction of it; and by the Lord Coke it is called the key of,

the Act of Parliament, to open and explain the meaning thereof.” —*Copeman v. Gallant* (1716), 1 P. Wms. 314, at p. 317, Lord Cowper, L. C.

“It is laid down [1 Jo. 163; Palmer, 485], on the construction of the statute of the 13 Eliz., that the preamble shall not restrain the enacting clause. But I take it to be agreed that, if not restraining the generality of the enacting clause will be attended with an inconvenience, the preamble shall restrain it.” —*Ryall v. Rolle* (1749), 1 Atk. 164, at p. 174, Lord Hardwicke, L. C.

“The preamble is certainly *special* and *particular*. Therefore, without express words in the enacting part, the operation of it must be confined to the preamble. But there are a variety of cases where it has been determined that strong words in the *enacting part* of a statute may extend it beyond the preamble.” —*Pattison v. Bankes* (1777), Cowp. 540, at p. 543, Lord Mansfield, C. J.

“I agree that the preamble cannot control the enacting part of a statute, which is expressed in clear and unambiguous terms. But if any doubt arise on the words of the enacting part, the preamble may be resorted to to explain it.” —*Crespigny v. Witte-noom* (1792), 4 T. R. 790, at p. 793, Buller, J.

“The law is, that if the enacting part will bear only one interpretation, the preamble shall not confine it. If that is doubtful, then the preamble may be applied to throw light upon it.” —*Mason v. Armitage* (1806), 13 Ves. 25, at p. 36, Lord Erskine, L. C.

“The preamble, though it may assist the construction of ambiguous words, cannot control a clear and express enactment.” —*Lees v. Summersgill* (1811), 17 Ves. 508, at p. 511, Sir William Grant, M. R.

“I agree that the preamble of a statute cannot control a clear and express enactment; but the plain intent of the legislature is expressed in the preamble, and the nature of the mischief, which is sought to be remedied, may serve to give a definite and qualified meaning to indefinite and general terms.” —*Emanuel v. Constable* (1827), 3 Russ. 436, at p. 438, Sir John Leach, M. R.

“In construing Acts of Parliament, we are to look not only at the language of the preamble, or of any particular clause, but at the language of the whole Act. And if we find in the preamble, or in any particular clause, an expression not so large and extensive in its import as those used in other parts of the Act, and upon a view of the whole Act we can collect, from the large and extensive expressions used in other parts, the real intention of the

legislature, it is our duty to give effect to the larger expressions, notwithstanding the phrases of less extensive import in the preamble, or in any particular clause.”—*Doe d. Bywater v. Brandling* (1828), 7 B. & C. 643, at p. 660, Lord Tenterden, C. J.

“On a sound construction of every Act of Parliament, I take it the words in the enacting part must be confined to that which is the plain object and general intention of the legislature in passing the Act, and the preamble affords a good clue to discover what that object was.”—*Halton v. Cove* (1830), 1 B. & Ad. 538, at p. 558, Lord Tenterden, C. J.

“I use the preamble only for the purpose of ascertaining what the cases are to which the Act was intended to apply. This is a strictly legitimate process for interpreting an Act of Parliament: *Emanuel v. Constable* [(1827), 3 Russ. 436]; *Foster v. Banbury* [(1829), 3 Sim. 40].”—*Salkeld v. Johnston* (1841), 1 Ha. 196, at p. 207; 11 L. J. Ch. 201, at p. 206, Sir J. Wigram, V.-C.

“It is admitted that the preamble of an Act may be legitimately used to ascertain and fix the subject-matter to which the enacting part is to be applied, and even in some cases to control and cut down the enacting part.”—*Fellowes v. Clay* (1843), 4 Q. B. 313, at p. 339; 12 L. J. Q. B. 202, at pp. 211, 212, Patteson, J.

“The general rule must prevail which I find laid down by Dampier, J., in the case of *Trueman v. Lambert* [(1815), 4 M. & S. 238]. ‘I have always,’ says that learned judge, ‘understood it is a standing rule in the construction of Acts of Parliament, that the enacting clause shall not be restrained by the preamble if the enacting words are large enough to comprehend the case.’ The language of Lord Abinger, C. B., in *Walker v. Richardson* [(1837), 2 M. & W. 882, at p. 889], is to the same effect:—‘The general rule is, that the preamble may extend, but cannot restrain, the effect of a particular clause.’”—*Kearns v. The Cordwainers’ Co.* (1859), 6 C. B. N. S. 388, at p. 408; 28 L. J. C. P. 285, at p. 290, Crowder, J.

“It is, however, a well-established rule that effect is to be given to the clear words of an enacting clause, though they may go far beyond the language of the preamble, that is, that where the words of an enacting clause are clear and explicit, then their natural and obvious meaning shall not be restricted or cut down by the use of language of less extensive import in the preamble [*Crespigny v. Wittenoom* (1792), 4 T. R. 790, at p. 793; *Lees v. Summersgill* (1811), 17 Ves. 508, at p. 511, per Sir William Grant, M. R.]. If,

then, the words of the enacting clauses, taken together, are words admitting, according to their natural import, but of one meaning, they must prevail, notwithstanding an argument to the contrary otherwise derivable from the preamble. If, on the other hand, the words are not so clear and explicit as to admit of but one clear and distinct meaning, but reasonable effect may be given to the words used in the enacting clauses by applying to them another meaning, then I apprehend that the preamble may be looked to, to throw light upon the subject [*Mason v. Armitage* (1806), 13 Ves. 25, at p. 36; see also the authorities collected in Davidson on Statutes, pp. 655—658].”—*Hughes v. The Chester and Holyhead Railway Company* (1861), 1 Drew. & Sm. 524, at p. 536; 31 L. J. Ch. 97, at p. 100, Channell, B.

“I assent to the proposition that if there be in an Act of Parliament a clear, explicit, positive enactment, its operation and effect are not to be cut down and restricted by the more limited tenor and scope of the preamble. But if the terms in which the enactment is expressed are such as to raise serious doubt as to its true intent and meaning, it is quite legitimate and proper to resort to the preamble for the resolution of that doubt, and to put such construction upon the enactment as will accord with the preamble.”—*Ibid.*, at p. 544; L. J. at p. 103, Kindersley, V.-C.

“You cannot resort to the preamble to ascertain the intention of an Act, unless there is an ambiguity in the enacting part.”—*Taylor v. Corporation of Oldham* (1876), 4 Ch. D. 395, at p. 404; 46 L. J. Ch. 105, Jessel, M. R.

“I quite agree with the argument which has been addressed to your Lordships, that in construing an Act of Parliament where the intention of the legislature is declared by the preamble, we are to give effect to that preamble to this extent, namely, that it shows us what the legislature are intending; and if the words of enactment have a meaning which does not go beyond that preamble, or which may come up to the preamble, in either case we prefer that meaning to one showing an intention of the legislature which would not answer the purposes of the preamble, or which would go beyond them. To that extent only is the preamble material.”—*Overseers of West Ham v. Iles* (1883), 8 App. Cas. 386, at pp. 388, 389; 52 L. J. Q. B. 650, Lord Blackburn.

“The preamble may be usefully called in where the enacting words are ambiguous, but where they are clear they cannot be cut down by reference to the preamble.”—*In re Watts*

(1885), 29 Ch. D. 947, at p. 950; 55 L. J. Ch. 332, at p. 333, Cotton, L. J.

Recitals.

Mere recitals, either of law or fact, in an Act are not conclusive.

Where the enacting part is clear and unambiguous, it is not controlled by the recitals.

Where the enacting part is ambiguous, it may be explained by the recitals.

"A mere recital in an Act of Parliament, either of fact or law, is not conclusive; and we are at liberty to consider the fact or the law to be different from the statement of the recital."—*Reg. v. Haughton* (1853), 1 El. & Bl. 501, at p. 516; 22 L. J. M. C. 89, at p. 94, Lord Campbell, C. J., delivering the judgment of the Court.

"A recital in an Act will not bind those who are not within its enacting part."—*Edinburgh and Glasgow Rail. Co. v. Linlithgow* (1859), 3 Macq. H. L. Cas. 691, at p. 704, Lord Truro, L. C.

"Now no doubt it is well established, as a rule in the construction of statutes, that where the enacting part is clear and unambiguous, you are not to control it by a reference to the recitals; but where the enacting part is ambiguous, you may explain it by reference to the recitals."—*Bentley v. Rotherham and Kimberworth Local Board of Health* (1876), 4 Ch. D. 588, at p. 592; 46 L. J. Ch. 284, at p. 285, Jessel, M. R.

"The object of the Act [32 & 33 Vict. c. 46] is to abolish the distinction between specialty and simple contract debts, and the recital of the Act is that that alone is the object. I must, therefore, read the enactment as corresponding with the express recital of its object; and if I find words that may be carried further, I must read them with reference to the mischief intended to be remedied, and to the express recital of the Act."—*Crowder v. Stewart* (1880), 16 Ch. D. 368, at p. 370; 50 L. J. Ch. 136, at p. 138, Malins, V.-C.

Headings.

Headings may sometimes be usefully referred to to determine the sense of any doubtful expression in a section ranged under a particular heading.

"The sections of the Railways Clauses Act are, as your lordships know, arranged in order under different heads, which indicate the

general object of the provisions immediately following; and these may be usefully referred to, to determine the sense of any doubtful expression in a section ranged under a particular heading.”—*Hammersmith, &c. Rail. Co. v. Brand* (1869), L. R. 4 H. L. 171, at p. 203; 38 L. J. Q. B. 265, at p. 277, Lord Chelmsford.

“The frame of the Lands Clauses Act shows that it is even dangerous to trust to the headings which occur at the commencement of these *fasciculi* of clauses for the purpose of restraining or confining the natural operation of the words which you find in the various clauses under those headings. . . . I think that the headings of these clauses are not to be relied upon—and many other instances might be given of the same kind inside the clauses themselves—showing, just in the same way that an Act of Parliament often goes beyond the preamble, that provisions have been introduced in the progress of the clauses going somewhat beyond the short and summary definition in the heading of the clauses. In fact, one of these Acts of Parliament shows that these short headings were introduced merely to ear-mark a set of clauses, and to afford a short and summary way by which they might be introduced, by reference, as enactments into other Acts of Parliament.”—*Ibid.*, at pp. 216, 217; L. J., at pp. 283, 284, Lord Cairns.

“I cannot come to the conclusion that the heading of a series of sections introduced into an Act of Parliament is not to be considered as part of the Act: I think that that word ‘appeal’ at the head of the section may properly be considered as part, and used for the purpose of construing any doubtful matter in the sections under that heading.”—*The Queen v. Local Government Board* (1882), 10 Q. B. D. 309, at p. 321; 52 L. J. M. C. 4, at p. 10, Brett, L. J.

“The heading ‘offices’ is not such a heading as could be grammatically read into any of the sections which follow. It seems to their lordships to have been inserted for the purpose of convenience of reference, and not intended to control the interpretation of the clauses which follow. It may be, indeed, that the fact of a clause being found in a certain group may in some cases possibly throw some light upon its meaning.”—*Union Steamship Company of New Zealand v. Melbourne Harbour Trust Commissioners* (1884), 9 App. Cas. 365, at p. 369; 53 L. J. P. C. 59, at p. 61, Sir Robert P. Collier, delivering the judgment of the Judicial Committee.

(See *Eastern Counties and London and Blackwall Railway v. Marriage* (1860), 9 H. L. C. 32; 31 L. J. Ex. 73, where it was held that several headings in the Lands Clauses Consolidation Act,

1845 (8 & 9 Vict. c. 18), were so drawn as to be applicable grammatically to the sections which followed them.)

Marginal Notes.

Marginal notes ought not to be relied on in construing an Act of Parliament.

"At the time when that Act [9 Geo. IV. c. 61] passed, the Parliament roll had no marginal notes, or punctuation, nor were the statutes separated into sections. We cannot, therefore, look at the marginal note for an exposition of the meaning of the section. Indeed, it is difficult to see how the marginal notes could ever be used in the construction of Acts of Parliament, seeing they are not put there by the legislature or assented to by them."—*Claydon v. Green* (1868), L. R. 3 C. P. 511, at p. 519; 37 L. J. C. P. 226, at p. 230, Bovill, C. J.

"Something has been said about the marginal note to sect. 4 of the 9 Geo. IV. c. 61. I wish to say a word upon that subject. It appears from Blackstone's Commentaries, Vol. I., p. 183, that, formerly, at one stage of the Bill in Parliament it was ordered to be ingrossed upon one or more rolls of Parliament. That practice seems to have continued down to the session of 1849, when it was discontinued, without, however, any statute being passed to warrant it. [See May's Parliamentary Practice, 3rd ed. 382.] Since that time, the only record of the proceedings of Parliament,—the important proceedings of the highest tribunal of the Kingdom,—is to be found in the copy printed by the Queen's printer. But I desire to record my conviction that this change in the mode of recording them cannot affect the rule which treated the title of the Act, the marginal notes, and the punctuation, not as forming part of the Act, but merely as *temporanea expositio*. The Act, when passed, must be looked at just as if it were still entered upon a roll, which it may be again if Parliament should be pleased so to order; in which case it would be without these appendages, which, though useful as a guide to a hasty inquirer, ought not to be relied upon in construing an Act of Parliament."—*Ibid.*, at pp. 521, 522; L. J. at p. 232, Willes, J.

"This view is borne out by the marginal note; and I may mention that the marginal notes of Acts of Parliament now appear on the rolls of Parliament, and consequently form part of the Acts; and in fact are so clearly so, that I have known them to be the subject of motion and amendment in Parliament."—*In re*

Venour's Settled Estates (1876), 2 Ch. D. 522, at p. 525; 45 L. J. Ch. 409, Jessel, M. R. (This *dictum* was questioned in *Att.-Gen. v. Great Eastern Railway Co.* (1879), 11 Ch. D. 449, at pp. 460, 461, 465.)

"The *dictum* in that case [*In re Venour's Settled Estates* (1876), 2 Ch. D. 522, at p. 525; 45 L. J. Ch. 409] is not strictly correct. I have since ascertained that the practice is so uncertain as to the marginal notes that it cannot be laid down that they are always on the roll."—*Sutton v. Sutton* (1882), 22 Ch. D. 511, at p. 513; 52 L. J. Ch. 333, at p. 334, Jessel, M. R.

Punctuation and Brackets.

Punctuation and brackets form no part of an Act of Parliament, and ought not to be relied on.

"By putting stops, or using the parenthesis, as pointed out by the plaintiff's counsel, it becomes perfectly clear; and we know that no stops are ever inserted in Acts of Parliament, or in deeds; but the courts of law, in construing them, must read them with such stops as will give effect to the whole."—*Doe d. Willis v. Martin* (1790), 4 T. R. 39, at p. 65, Lord Kenyon, C. J.

"It seems that in the Rolls of Parliament the words are never punctuated."—*Barrow v. Wadkin* (No. 2) (1857), 24 Beav. 327, at p. 330; 27 L. J. Ch. 129, at p. 139, Sir John Romilly, M. R.

"To my mind, however, it is perfectly clear that in an Act of Parliament there are no such things as brackets any more than there are such things as stops."—*Duke of Devonshire v. O'Connor* (1890), 24 Q. B. D. 468, at p. 478; 59 L. J. Q. B. 206, at p. 213, Lord Esher, M. R.

Sections.

A section shall have effect as a substantive enactment without introductory words.

A section should in general be construed liberally.

A section is to be construed liberally unless some other section cuts down its meaning, or the section itself is repugnant to the purview of the Act.

Lord Brougham's Act, 1850 (13 & 14 Vict. c. 21) [10th June, 1850].

Sect. 2. "All Acts shall be divided into sections, if there be more enactments than one, which sections shall be deemed to be substantive enactments, without any introductory words." (Repealed 52 & 53 Vict. c. 63, s. 41.)

Interpretation Act, 1889 (52 & 53 Vict. c. 63) [30th August, 1889].

Sect. 8. "Every section of an Act shall have effect [*on and after 1st January, 1890*], as a substantive enactment without introductory words."

"Now anyone who contends that a section of an Act of Parliament is not to be read literally must be able to show one of two things, either that there is some other section which cuts down its meaning, or else that the section itself is repugnant to the general purview of the Act."—*Nuth v. Tamplin* (1881), 8 Q. B. D. 247, at p. 253; 51 L. J. Q. B. 177, at p. 180, Jessel, M. R.

Proviso to Section.

"When one finds a proviso to the section, the natural presumption is that, but for the proviso, the enacting part of the section would have included the subject-matter of the proviso."—*Mullins v. Treasurer of Surrey* (1880), 5 Q. B. D. 170, at p. 173; 49 L. J. Q. B. 257, at p. 259, Lush, J.

Saving Clause.

"A saving in an Act of Parliament which is repugnant to the body of the Act is void."—1 *Coke*, p. 118, Part I. 47 a.

Schedules.

If the enacting part and the schedule cannot be made to correspond, the latter must yield to the former.

"We have also to consider the language of the section itself to which the schedule is appended; and if there be any contradiction between the two, which upon fair construction there perhaps will not be found to be, upon ordinary principles, the form, which is made to suit rather the generality of cases than all cases, must give way."—*The Queen v. Baines* (1840), 12 Ad. & E. 210, at p. 227, Lord Denman, C. J.

"It would be quite contrary to the recognized principles upon which courts of law construe Acts of Parliament to enlarge the conditions of the enactment, and thereby restrain its operation, by any reference to the words of a mere form, given for convenience' sake in a schedule, and still more so, when that restricted operation is not favourable to the liberty of the subject, but the reverse. It is needless to cite authorities for these principles of construction, but it so happens that there is in existence a most apposite one

by a judge of high repute [Lord Cottenham] in relation to the schedules of this very statute. In *Re Baines* [(1840), 1 Cr. & Ph. 31] he said, speaking of this very schedule, 'if the enacting part and the schedule cannot be made to correspond, the latter must yield to the former.'—*Dean v. Green* (1882), 8 P. D. 79, at pp. 89, 90, Lord Penzance.

Title of a Schedule.

"Very little weight is in my opinion attachable, in any case, to the mere title of a schedule, as qualifying the enacting words of a statute."—*Trustees of Clyde Navigation v. Laird* (1883), 8 App. Cas. 658, at pp. 672, 673, Lord Watson.

SECTION III.

DIFFICULTIES OF CONSTRUCTION.

A department should be instituted by which bills, after they pass committee, might be supervised and put into intelligible and working order, and then submitted for final revision to Parliament before they pass into laws.

The great difficulty in all cases is in applying rules to the particular case.

The Court must, in each case, apply the admitted rules to the case in hand, not deviating from the literal sense of the words without sufficient reason, or more than is justified, yet not adhering slavishly to them where to do so would obviously defeat the intention which may be collected from the whole statute.

"The difficulty arises from the form of the short clause we are required to interpret. Your Lordships, exercising your appellate jurisdiction, act as a court of construction. You do not legislate, but ascertain the purpose of the legislature; and if you can discover what that purpose was, you are bound to enforce it, although you may not approve the motives from which it springs, or the objects which it aims to accomplish. Our daily experience demonstrates that the task of construction, so understood, is not an easy one. It sometimes involves the necessity of harmonising

apparently inconsistent clauses, and making homogeneous provisions cast together, haphazard, by various minds, differently constituted and looking to different and special objects, without due regard to the harmony of the whole. I have often thought that our legislative arrangements need much revision in this regard, and that, if it were possible, a department should be instituted by which bills, after they pass committee, might be supervised and put into intelligible and working order, and then submitted for final revision to Parliament before they pass into laws. But, in the meantime, we must deal with things as we find them, and reach, if we can, the true meaning of the confused words with which we often have to deal.”—*River Wear Commissioners v. Adamson* (1877), 2 App. Cas. 743, at p. 756; 47 L. J. Q. B. 193, at p. 198, Lord O’Hagan.

“In *Allgood v. Blake* [(1873), L. R. 8 Ex. 160, at pp. 163, 164; 42 L. J. Ex. 101, at p. 104], in the judgment of the Exchequer Chamber (which I had the honour to deliver) as to the construction of a will, it is said: ‘The great difficulty in all cases is in applying these rules to the particular case; for to one mind it may appear that an effect produced by construing the words literally is so inconsistent with the rest of the will, or produces an absurdity or inconvenience so great, as to justify the Court in putting on them another signification, which to that mind seems not an improper signification of the words; whilst to another mind the effect produced may appear not so inconsistent, absurd, or inconvenient as to justify putting any other signification on the words than their proper one; and the proposed signification may appear a violent construction. We apprehend that no precise line can be drawn, but that the Court must, in each case, apply the admitted rules to the case in hand, not deviating from the literal sense of the words without sufficient reason, or more than is justified, yet not adhering slavishly to them when to do so would obviously defeat the intention which may be collected from the whole will.’ My Lords, *mutatis mutandis*, I think this is applicable to the construction of statutes as much as of wills. And I think it is correct.”—*Ibid.*, at p. 765; L. J. at p. 203, Lord Blackburn.

SECTION IV.

THINGS TO BE CONSIDERED IN INTERPRETATION.

	PAGE
All Parts together	129
Common Law: Mischief and Remedy	129
Intention	130
Subject-matter	131
Objects	131
Surrounding Circumstances—State of Law	132
Policy	133
History	133
Report of Commissioners	134
Debate in Parliament	134

All Parts together.

“The office of a good expositor of an Act of Parliament is to make construction on all parts together, and not of one part only by itself: *nemo enim aliquam partem recte intelligere possit, antequam totum iterum atque iterum perlegerit.*”—2 *Coke*, p. 161, Part III. 59 b ((1595) *Lincoln College's Case*).

Common Law.

“If any case be doubtful upon a statute, it is good to construe it according to the common law, as it is said in *Delamer's Case* in Plow. Com. 351.”—1 *Coke*, p. 330, Part I. 134 a ((1589-95) *Chudleigh's Case*).

“Judges and sages of the law have always expounded general statutes according to the rule of the common law, which is built upon the perfection of reason, and not according to any private and sudden conceit or opinion.”—2 *Coke*, p. 41, Part. III. 13 b ((1584) *Harbert's Case*).

“When the provision of a statute is general, it is subject to the controul and order of the common law, for statutes are not presumed to make any alteration in the common law further or otherwise than the Act expressly declares: therefore, in all general matters the law presumes the Act did not intend to make any alteration; for if the Parliament had had that design, they would have expressed it in the Act, *Rex v. The Bishop of London* (1693), 1 Show. 455.”—*Ibid.*, note (u).

B.

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“As long ago as *Heydon's Case* [(1584), 2 Coke Rep. p. 18, Part III. 7b], Lord Coke says, that it was resolved ‘that for the sure and true interpretation of all statutes in general (be they penal or beneficial, restrictive or enlarging of the common law), four things are to be discerned and considered:—

“‘1st. What was the common law before the making of the Act?

“‘2nd. What was the mischief and defect for which the common law did not provide?

“‘3rd. What remedy the Parliament hath resolved and appointed to cure the disease of the Commonwealth? and

“‘4th. The true reason of the remedy; and then the office of all the judges is always to make such construction as shall suppress the mischief and advance the remedy.’

But it is to be borne in mind that the office of the judges is not to legislate, but to declare the expressed intention of the legislature, even if that intention appears to the Court injudicious; and I believe that it is not disputed, that what Lord Wensleydale used to call the golden rule is right.”—*River Wear Commissioners v. Adamson* (1877), 2 App. Cas. 743, at p. 764; 47 L. J. Q. B. 193, at p. 203, Lord Blackburn. (See *post*, p. 140.)

Intention.

The intention of the makers of the Act is to be observed.

The intention is to be gathered from the words in their ordinary sense, as applied to the subject-matter, if the words used are not clear, then according to the objects of the statute.

It is customary to consider what was the exact state of the law and other matters of the kind at the time the statute was passed.

The policy of a statute is not a safe guide in construing it.

The reports of commissioners are not to control the construction of statutes.

“In Acts of Parliament which are to be construed according to the intent and meaning of the makers of them, the original intent and meaning is to be observed.”—6 Coke, p. 138, Part XI. 73 b.

“The rule is, that where a general intention is expressed, and the Act expresses also a particular intention incompatible with the general intention, the particular intention is to be considered in the nature of an exception.”—*Churchill v. Crease* (1828), 5 Bing. 177, at p. 180, Best, C. J.

"I need not say, that I can know nothing of the intention of the Act, except from the words in which it is expressed, applied to the facts existing at the time."—*Logan v. Courtown (Earl)* (1851), 13 Beav. 22, at p. 29; 20 L. J. Ch. 347, at p. 355, Lord Langdale, M. R.

"I take that case [*In re Earl of Berkeley's Will* (1874), L. R. 10 Ch. 56] to decide that there is such a thing as construing an Act according to its intent, though not according to its words."—*In re Bethlem Hospital* (1875), L. R. 19 Eq. 457, at p. 459: 44 L. J. Ch. 406, Jessel, M. R.

Subject-matter.

"There is a rule for the construction of statutes which is well expressed in Maxwell on the Interpretation of the Statutes [Ch. 2, s. 1], 'In interpreting a statute it is to be borne in mind at the outset that language is always used *secundum subjectam materiam*, and that it must therefore be understood in the sense which best harmonises with the subject-matter.'—*Bank of India v. Wilson* (1877), 3 Ex. D. 108, at p. 119; 47 L. J. Ex. 153, at p. 158, Pollock, B.

"Whenever you have to construe a statute or document, you do not construe it according to the mere ordinary general meaning of the words, but according to the ordinary meaning of the words as applied to the subject-matter with regard to which they are used, unless there is something which obliges you to read them in a sense which is not their ordinary sense in the English language as so applied. That I take it is the cardinal rule."—*Lion Insurance Association v. Tucker* (1883), 12 Q. B. D. 176, at p. 186; 53 L. J. Q. B. 185, at p. 189, Brett, M. R.

"An Act of Parliament is to be construed according to the ordinary meaning of the words in the English language as applied to the subject-matter, unless there is some very strong ground, derived from the context, or reason why it should not be so construed."—*Hornsey Local Board v. Monarch Investment Building Society* (1889), 24 Q. B. D. 1, at p. 5; 59 L. J. Q. B. 105, at p. 106, Lord Esher, M. R.

Objects.

"We must construe this statute by what appears to have been the intention of the Legislature. But we must ascertain that intention from the words of the statute, and not from any general

inferences to be drawn from the nature of the objects dealt with by the statute.”—*Fordyce v. Bridges* (1847), 1 H. L. Cas. 1, at p. 4, Lord Brougham.

“It is, however, a very serious matter to hold that when the main object of a statute is clear, it shall be reduced to a nullity by the draftsman’s unskilfulness or ignorance of law. It may be necessary for a court of justice to come to such a conclusion, but their lordships hold that nothing can justify it except necessity or the absolute intractability of the language used.”—*Salmon v. Duncombe* (1886), 11 App. Cas. 627, at p. 634; 55 L. J. P. C. 69, at p. 73, Lord Hobhouse, delivering the judgment of the Judicial Committee.

“I am satisfied that we have nothing to do with the general object of the enactment if the words used are clear; they are clear here, and we ought not to enter upon a refined consideration of the question whether they carry out the object of the statute.”—*Crofts v. Taylor* (1887), 19 Q. B. D. 524, at p. 528; 56 L. J. M. C. 137, at p. 140, Huddleston, B.

Surrounding Circumstances—State of Law.

“I apprehend that, in construing an Act of Parliament, a deed, will, or whatever other instrument may have to be construed by the Court, I have a right to look at all the circumstances which the parties to the instrument, whether a testator, a donor, or the legislature, who are executing a solemn act, had before them at the time, and were themselves contemplating, as proved, not of course by any extrinsic evidence, but by evidence afforded by the instruments themselves, and also such matters as can be proved by extrinsic evidence to have been the circumstances which surrounded them, and which may have affected the conclusion at which they have arrived. Such a mode of construing an Act of Parliament has been not unfrequently resorted to. It is customary to consider what was the exact state of the law and other matters of the kind at the time when a particular Act was passed.”—*Att.-Gen. v. Earl of Powis* (1853), Kay 186, at p. 207, Sir W. Page Wood, V.-C.

“In construing any act of the legislature, the verbal construction of the particular section in question, if it be plain and simple, must govern the Court in arriving at its conclusion. If there be any degree of doubt or difficulty upon the wording of the particular section:

in question, the Court is entitled to look, first at the circumstances attending the passing of the Act, next, at the preamble, as far as it affords any indication which may serve as a key to the interpretation of the Act, and then, I may add, to the whole purport and scope of the Act, to be collected from its various clauses, other than the particular clause the meaning of which is in dispute."—*Cope v. Doherty* (1858), 4 K. & J. 367, at p. 374; 27 L. J. Ch. 600, at p. 601, Sir W. Page Wood, V.-C.

"In order to construe the section we are entitled to consider the state of the law at the time it was passed."—*Phillipps v. Rees* (1889), 24 Q. B. D. 17, at p. 20; 59 L. J. Q. B. 1, at p. 3, Lord Esher, M. R.

"In order to construe an Act of Parliament, it was laid down long ago in *Heydon's Case* [(1584), 2 Coke Rep. p. 18, Part III. 7 b] that one of the most material things to consider is the state of the law before the Act, and the defect in that law which the Act was intended to remedy."—*Pelton Brothers v. Harrison*, [1891] 2 Q. B. 422, at p. 424; 60 L. J. Q. B. 742, at p. 743, Kay, L. J., reading the judgment of the Court.

Policy of the Law.

"The general words of a statute are not to be so construed as to alter the previous policy of the law, unless no sense or meaning can be applied to those words consistently with the intention of preserving the existing policy untouched. . . . This principle of construction, as a general proposition, cannot be disputed."—*Minet v. Leman* (1855), 20 Beav. 269, at p. 278; 24 L. J. Ch. 545, at pp. 547, 548, Sir John Romilly, M. R.

"It is never (as it seems to me) very safe ground, in the construction of a statute, to give weight to views of its policy, which are themselves open to doubt and controversy."—*Municipal Building Society v. Kent* (1884), 9 App. Cas. 260, at p. 273; 53 L. J. Q. B. 290, at p. 298, Earl of Selborne, L. C.

History.

"We have not to do with the history of the words, unless the words in the statute are doubtful, and require historical investigation to explain them. If the words are really and fairly doubtful, then, according to well-known legal principles, and principles of common sense, historical investigation may be used for the purpose of clearing away the doubt which the phraseology of the statute

creates."—*The Queen v. Most* (1881), 7 Q. B. D. 244, at p. 251; 50 L. J. M. C. 113, at p. 116, Lord Coleridge, C. J.

"It is useless to enter into an inquiry with regard to the history of an enactment, and any supposed defect in the former legislation on the subject which it was intended to cure, in cases where the words of the enactment are clear. It is only material to enter into such an inquiry where the words of an enactment are ambiguous and capable of two meanings, in order to determine which of the two meanings was intended."—*The Queen v. Bishop of London* (1889), 24 Q. B. D. 213, at pp. 224, 225; 59 L. J. Q. B. 169, at p. 172, Lord Esher, M. R.

Report of Commissioners.

"We are not at liberty to infer the intention of the legislature from any other evidence than the construction of the Act itself; and indeed, if we were allowed to draw any inference from the comparison between the language of the report [the Report of the Real Property Commissioners (cited by Lord Denman in his judgment in *Fellowes v. Clay* (1843), 4 Q. B. 313, at p. 356; 12 L. J. Q. B. 202, at p. 218)] and that of the legislature, the more legal inference would be, that the marked distinction, observable between the two, could not have been the result of accident, but must have been advised and intentional."—*Salkeld v. Johnson* (1846), 2 C. B. 749, at p. 757, Tindal, C. J.

"The report of commissioners is no legitimate ground for arriving at the construction of a statute."—*Martin v. Hemming* (1854), 24 L. J. Ex. 3, at p. 5; 10 Ex. 478, Pollock, C. B.

"No doubt that is so, although in a very important case as to the construction of Lord Tenterden's Act with respect to tithes, Lord Denman, in his judgment, relied upon the Report of the Real Property Commissioners. [See *Fellowes v. Clay* (1843), 4 Q. B. 313, at p. 356; 12 L. J. Q. B. 202, at p. 218]."—*Ibid.*, Parke, B.

"I find nothing in the language of the Act itself, to show such an intention, and I cannot, for the purpose of construing it, look at the intention expressed by the commissioners. [*The Report of the Chancery Commissioners had been referred to*]."—*Ewart v. Williams* (1854), 3 Drew. 21, at p. 24, Kindersley, V.-C.

Debate in Parliament.

"We are not, however, concerned with what Parliament intended, but simply with what it has said in the statute. The statute is

clear, and the parliamentary history of a statute is wisely inadmissible to explain it, if it is not.”—*The Queen v. Hertford College* (1878), 3 Q. B. D. 693, at p. 707 ; 47 L. J. Q. B. 649, at p. 658, Lord Coleridge, C. J., delivering the judgment of the Court of Appeal.

“It has been regretted in the House of Lords that the Court of Appeal had allowed such a reference to be made in *Reg. v. Bishop of Oxford* [(1879), 4 Q. B. D. 525, at p. 535 ; 48 L. J. Q. B. 609, at pp. 633, 634].”—*South Eastern Rail. Co. v. Railway Commissioners* (1881), 50 L. J. Q. B. 201, at p. 203, Selborne, L. C.

“We must construe Acts of Parliament as they are, without regard to consequences, except in those cases where the words used are so ambiguous that they may be construed in two senses, and even then we must not regard what happened in Parliament.”—*Richards v. McBride* (1881), 8 Q. B. D. 119, at p. 123 ; 51 L. J. M. C. 15, Grove, J.

SECTION V.

	PAGE
The Crown	135
General Statutory Interpretation	137
Interpretation Clauses	140
The Golden Rule	140
Dictionary Meaning	145
Context	145
General Words and Expressions	146
<i>Ejusdem generis</i> Doctrine	146
Same Word in Different Parts of a Statute	148
Different Words in same Statute	148
Phrases in Statutes <i>in pari materia</i>	149
Words not relating to any Art or Science	149
Technical Language	149
Legal Sense	150
Superfluous Words	150
Mistakes	150
<i>Casus Omissus</i>	151
Insensible Phrase	151
Extraordinary Results	152
Operating unreasonably or absurdly	152
Permissive, Directory or Enabling Statutes	153
Optional Statutes	154
Imperative or Permissive Phrases	154
Obligatory or Directory	156
Restriction	156
Extension	157
Implied Words	158

The Crown.

“The king shall not be exempted by construction of law out of the general words of acts made to suppress wrong, because he is the

fountain of justice and common right, and the king being God's lieutenant cannot do a wrong. *Solum Rex hoc non potest facere, quod non potest injuste agere.*"—6 Coke, p. 135, Part XI. 72 a. (*Magdalen College Case*).

"It is a general rule that the Crown, if not named, is not bound by the general words of statutes."—6 Coke, p. 138, Part XI., note (E). [Note in *Serjt. Hill's* copy.]

"It is a well-established rule, generally speaking, in the construction of Acts of Parliament, that the king is not included unless there be words to that effect; for it is inferred *primâ facie* that the law made by the Crown, with the assent of Lords and Commons, is made for subjects and not for the Crown: *Willion v. Barkley* (1561-2), Plow. 223."—*Att.-Gen. v. Donaldson* (1842), 10 M. & W. 117, at pp. 123, 124, Alderson, B., delivering the judgment of the Court.

"The question we have to decide appears to me to be a very simple one. The first point to be considered is, what is the general law on the subject of the prerogative of the Crown? Now on that I think there is no dispute whatever. The general rule, as expressed in Bacon's Abridgement, 7th ed., p. 462, is, 'That where an Act of Parliament is made for the public good, the advancement of religion and justice, and to prevent injury and wrong, the king shall be bound by such Act, though not particularly named therein; but where a statute is general, and thereby any prerogative, right, title or interest is divested or taken from the king, in such case the king shall not be bound, unless the statute is made by express terms to extend to him'; and the point came before the Court of Exchequer in *Att.-Gen. v. Donaldson* [(1842), 10 M. & W. 117]."—*Ex parte Postmaster-General, In re Bonham* (1879), 10 Ch. D. 595, at pp. 600, 601; 48 L. J. Bank. 84, at p. 87, Jessel, M. R.

"I entirely agree with the learned counsel for the appellants when he says that the Court cannot go a hair's breadth beyond the letter of the enactment in favour of the Crown, but by that I understand that, if something is not within the letter of an enactment, one must not say, in favour of the Crown, that it comes within its spirit; the enactment must not be enlarged in any way, and it must not receive a benevolent construction in favour of the Crown. But that does not disentitle the Court to have regard to every legitimate means for ascertaining what is the legal sense in which the words are used. If there be, as I think there is here,

an ambiguity which is not latent but patent, according to the old distinction, that is not a matter to be solved by evidence as to the meaning of the parties in a case, that is, where there could be parties—it is to be solved by the Court as a matter of construction.”
—*Committee of London Clearing Bankers v. Commissioners of Inland Revenue*, [1896] 1 Q. B. 222, at pp. 226, 227, Wright, J.

General Statutory Interpretation.

Lord Brougham’s Act, 1850 (13 & 14 Vict. c. 21). [10th June, 1850.] Repealed by Interpretation Act, 1889 (52 & 53 Vict. c. 63, s. 41).

“Sect. 4. Be it enacted, that in all Acts, words importing the masculine gender shall be deemed and taken to include females, and the singular to include the plural, and the plural the singular, unless the contrary as to gender or number is expressly provided;

“And the word ‘month’ to mean calendar month, unless words be added showing lunar month to be intended;

“And ‘county’ shall be held to mean also county of a town or of a city, unless such extended meaning is expressly excluded by words;

“And the word ‘land’ shall include messuages, tenements and hereditaments, houses and buildings, of any tenure, unless where there are words to exclude houses and buildings, or to restrict the meaning to tenements of some particular tenure;

“And the words ‘oath,’ ‘swear,’ and ‘affidavit,’ shall include affirmation, declaration, affirming and declaring, in the case of persons by law allowed to declare or affirm instead of swearing.”

“Person.”

“That the word ‘person’ may include ‘corporation’ I will not deny. Though at the same time, considering the way in which statutes are now drawn, that where ‘corporation’ is meant it is always named,—at least there is no modern instance to the contrary,—that where the legislature made a general interpretation clause that ‘person’ should be male and female, plural and singular, &c., it did not include corporation, I should be reluctant to hold that in any particular statute ‘person’ included ‘corporation’ unless there was strong reason so to do.”—*Pharmaceutical Society v. London Supply Association* (1880), 5 Q. B. D. 310, at p. 313; 49 L. J. Q. B. 338, at p. 340, Bramwell, L. J.

“I think the principle laid down by the junior counsel for the respondents [Mr. Finlay] was substantially right; that if a statute provides that no person shall do a particular act except on a par-

tioular condition, it is *prima facie* natural and reasonable (unless there be something in the context, or in the manifest object of the statute, or in the nature of the subject-matter, to exclude that construction) to understand the legislature as intending such persons, as, by the use of proper means, may be able to fulfil the condition; and not those who, though called 'persons' in law, have no capacity to do so at any time, by any means, or under any circumstances whatsoever."—*Pharmaceutical Society v. London Supply Association* (1880), 5 App. Cas. 857, at p. 862; 49 L. J. Q. B. 736, at p. 738, Lord Selborne, L. C.

Interpretation Act, 1889 (52 & 53 Vict. c. 63).

Re-enactment of existing Rules.

Rules as to Gender and Number.

"Sect. 1.—(1.) In this Act, and in every Act passed after the year 1850 whether before or after the commencement of this Act [1st January, 1890], unless the contrary intention appears,—

"(a) Words importing the masculine gender shall include females; and

"(b) Words in the singular shall include the plural, and words in the plural shall include the singular.

"(2.) The same rules shall be observed in the construction of every enactment relating to an offence punishable on indictment or on summary conviction, when the enactment is contained in an Act passed in or before the year 1850.

Application of Penal Acts to Bodies Corporate.

"Sect. 2.—(1.) In the construction of every enactment relating to an offence punishable on indictment or on summary conviction, whether contained in an Act passed before or after the commencement of this Act [1st January, 1890], the expression 'person' shall, unless the contrary intention appears, include a body corporate.

"(2.) Where under any Act, whether passed before or after the commencement of this Act [1st January, 1890], any forfeiture or penalty is payable to a party aggrieved, it shall be payable to a body corporate in every case where that body is the party aggrieved.

Meanings of certain Words in Acts since 1850.

"Sect. 3. In every Act passed after the year 1850, whether before or after the commencement of this Act [1st January, 1890], the

following expressions shall, unless the contrary intention appears, have the meanings hereby respectively assigned to them; namely,—

- “ The expression ‘ month ’ shall mean calendar month ;
- “ The expression ‘ land ’ shall include messuages, tenements, and hereditaments, houses, and buildings of any tenure ;
- “ The expressions ‘ oath ’ and ‘ affidavit ’ shall, in the case of persons for the time being allowed by law to affirm or declare instead of swearing, include affirmation and declaration, and the expression ‘ swear ’ shall, in the like case, include affirm and declare.

Meaning of “ County ” in past Acts.

“ Sect. 4. In every Act passed after the year 1850, and before the commencement of this Act [1st January, 1890], the expression ‘ county ’ shall, unless the contrary intention appears, be construed as including a county of a city, and a county of a town.

Meaning of “ Parish.”

“ Sect. 5. In every Act passed after the year 1866, whether before or after the commencement of this Act [1st January, 1890], the expression ‘ parish ’ shall, unless the contrary intention appears, mean, as respects England and Wales, a place for which a separate poor-rate is or can be made, or for which a separate overseer is or can be appointed.

Meaning of “ County Court.”

“ Sect. 6. In this Act, and in every Act and Order of Council passed or made after the year 1846, whether before or after the commencement of this Act [1st January, 1890], the expression ‘ county court ’ shall, unless the contrary intention appears, mean, as respects England and Wales, a Court under the County Courts Act, 1888.

Meaning of “ Sheriff Clerk, etc.,” in Scotch Acts.

“ Sect. 7. In every Act relating to Scotland, whether passed before or after the commencement of this Act [1st January, 1890], unless the contrary intention appears—

- “ The expression ‘ sheriff clerk ’ shall include steward clerk ;
- “ The expressions ‘ shire,’ ‘ sherifffdom,’ and ‘ county ’ shall include any stewartry in Scotland.”

Interpretation Clauses.

An interpretation clause should be used for the purpose of interpreting words which are ambiguous or equivocal, and not so as to disturb the meaning of such as are plain.

“With regard to all these interpretation clauses, I understand them to define the meaning, supposing there is nothing else in the Act which is opposed to the particular interpretation. When a concise term is used, which is to include many other subjects besides the actual thing designated by the word, it must always be used with due regard to the true, proper and legitimate construction of the Act.”—*Midland Rail. Co. v. Ambergate, Nottingham and Boston and Eastern Junction Rail. Co.* (1853), 10 Hare 359, at p. 369, Turner, V.-C.

“Even for the purpose of the Act of Parliament [Bills of Sale Act, 1854 (17 & 18 Vict. c. 36)] it appears to me that the interpretation clause does no more than say, that where you find in the Act those words ‘personal chattels’ they shall, unless there be something repugnant in the context, or in the sense, include fixtures. What operation upon fixtures so covered by the expression ‘personal chattels’ the Act may have, must depend upon its particular provisions, and that interpretation clause can have no influence whatever upon the present question, nor can anything else in that statute, if it be true, as seems admitted at the Bar, that this is not a case legislated for in any other way by that statute.”—*Meux v. Jacobs* (1875), L. R. 7 H. L. 481, at pp. 493, 494; 44 L. J. Ch. 481, at p. 486, Lord Selborne.

“I think an interpretation clause should be used for the purpose of interpreting words which are ambiguous or equivocal, and not so as to disturb the meaning of such as are plain.”—*The Queen v. Pearce* (1880), 5 Q. B. D. 386, at p. 389; 49 L. J. M. C. 81, at p. 82, Lush, J.

The Golden Rule.

The grammatical and ordinary sense of the words is to be adhered to, unless that would lead to some absurdity, or some repugnance or inconsistency with the rest of the statute, in which case the grammatical and ordinary sense of the words may be modified, so as to avoid that absurdity and inconsistency, but no further.

“I am not sure whether we shall fulfil the intention of the legislature; it has often happened that we have been unable to do

so throughout a series of decisions. Still, the rule of construction which the Court must follow is, to intend the legislature to have meant what they have actually expressed, unless a manifest incongruity would result from doing so, or unless the context clearly shows that such a construction would not be the right."—*Rex v. Banbury* (1834), 1 A. & E. 136, at p. 142, Parke, J.

"The rule by which we are to be guided in construing Acts of Parliament is to look at the precise words, and to construe them in their ordinary sense, unless it would lead to any absurdity or manifest injustice; and if it should, so to vary and modify them as to avoid that which it certainly could not have been the intention of the legislature should be done."—*Perry v. Skinner* (1837), 2 M. & W. 471, at p. 476, Parke, B. (See also *Abley v. Dale* (1851), 11 C. B. 378, at p. 391; 20 L. J. C. P. 233, at p. 235, where Jervis, C. J., refers to this rule as the golden rule.)

"The rule of law, I take it, upon the construction of all statutes, . . . is; whether they be penal or remedial, to construe them according to the plain, literal, and grammatical meaning of the words in which they are expressed, unless that construction leads to a plain and clear contradiction of the apparent purpose of the Act, or to some palpable and evident absurdity."—*Att.-Gen. v. Lockwood* (1842), 9 M. & W. 378, at p. 398, Alderson, B.

"It is our duty to construe the statute according to the grammatical meaning of the words, unless some absurdity would ensue from so construing it, or an uniform series of decisions had already established a particular construction."—*Doe d. Ellis v. Owens* (1842), 10 M. & W. 514, at p. 521; 12 L. J. Ex. 53, at p. 56, Parke, B.

"It is, however, true, that words which are plain enough in their ordinary sense may, when they would involve any absurdity, or inconsistency, or repugnance to the clear intentions of the legislature, to be collected from the whole of the Act or Acts *in pari materia* to be construed with it, or other legitimate grounds of interpretation, be modified or altered so as to avoid that absurdity, inconsistency, or repugnance, but no further; . . . for then we may predicate that the words never could have been used by the framers of the law in such a sense."—*Miller v. Salomons* (1852), 7 Ex. 475, at p. 546; 21 L. J. Ex. 161, at p. 191, Parke, B.

"In construing an Act of Parliament, our first business, I conceive, is to examine the words themselves which are used; and, if in these there be no ambiguity, it is seldom desirable to go further;

and although from the common uncertainty of language we may very frequently be driven to ascertain the intention by a consideration of the preamble where it recites the object, or of the previous common law where the statute clearly alters or supersedes it, in order to settle the meaning of the enactment itself, yet the object still is only to ascertain the mind of the legislature as expressed in words; and when, in either of those ways, you have arrived at the meaning, I think nothing is more dangerous than to flinch from that conclusion, because we think the enactment is less wise or efficacious than it might have been made, or even wholly fails of its object. Perhaps the most efficacious mode of procuring good laws, certainly the only one allowable to a court of justice, is to act fully up to the spirit and language of bad ones, and to let their inconvenience be fully felt, by giving them their full effect.”—*Pocock v. Pickering* (1852), 18 Q. B. 789, at pp. 797, 798; 21 L. J. Q. B. 365, at p. 368, Coleridge, J.

“It must, however, be conceded that, where the grammatical construction is quite clear and manifest and without doubt, that construction ought to prevail, unless there be some strong and obvious reason to the contrary. But the rule adverted to is subject to this condition that, however plain the apparent grammatical construction of a sentence may be, if it be perfectly clear from the contents of the same document (and the same rule applies in the construction not only of an Act of Parliament, but of deeds, wills, and of any subject of a like nature), that the apparent grammatical construction cannot be the true one, then that which upon the whole is the true meaning shall prevail, in spite of the grammatical construction of a particular part of it.”—*Waugh v. Middleton* (1853), 8 Ex. 352, at p. 357; 22 L. J. Ex. 109, at p. 111, Pollock, C. B.

“We ought to apply to this case what is called the golden rule of construction, namely, to give an Act of Parliament the plain, fair, literal meaning of its words, where we do not see from its scope that such meaning would be inconsistent or would lead to manifest injustice.”—*Mattison v. Hart* (1854), 23 L. J. C. P. 108, at p. 114, Jervis, C. J.

“The meaning of particular words in an Act of Parliament, to use the words of Abbott, C. J., in *Rex v. Hall* [(1822), 1 B. & C. 122, at p. 136], ‘is to be found not so much in a strict etymological propriety of language, nor even in popular use, as in the subject or occasion on which they are used.’”—*The Lion* (1869),

L. R. 2 P. C. 525, at p. 530; 38 L. J. Ad. 51, at p. 54, Lord Romilly, M. R., delivering the judgment of the Judicial Committee.

“There is always some presumption in favour of the more simple and literal interpretation of the words of a statute, or other written instrument.

“The more literal construction ought not to prevail if (as the Court below has thought) it is opposed to the intentions of the legislature, as apparent by the statute; and if the words are sufficiently flexible to admit of some other construction by which that intention will be better effectuated.”—*Caledonian Rail. Co. v. North British Rail. Co.* (1881), 6 App. Cas. 114, at pp. 121, 122, Lord Selborne, L. C. (Cited and followed by Jessel, M. R., in *Ex parte Walton* (1881), 17 Ch. D. 746, at pp. 750, 751; 50 L. J. Ch. 657, at p. 659; and by Chitty, J., in *Spencer v. Metropolitan Board of Works* (1882), 22 Ch. D. 142, at pp. 148, 149.)

“Now I believe there is not much doubt about the general principle. Lord Wensleydale used to enunciate (I have heard him many and many a time) that which he called the golden rule for construing all written engagements. I find that he stated it very clearly and accurately in *Grey v. Pearson* [(1857), 6 H. L. C. 61, at p. 106; 26 L. J. Ch. 473, at p. 481] in the following terms: ‘I have been long and deeply impressed with the wisdom of the rule, now, I believe, universally adopted, at least in the Courts of Law in Westminster Hall, that in construing wills, and indeed statutes and all written instruments, the grammatical and ordinary sense of the words is to be adhered to, unless that would lead to some absurdity, or some repugnance or inconsistency with the rest of the instrument, in which case the grammatical and ordinary sense of the words may be modified, so as to avoid that absurdity and inconsistency, but no further.’ I agree in that completely, but unfortunately in the cases in which there is real difficulty it does not help us much, because the cases in which there is real difficulty are those in which there is a controversy as to what the grammatical and ordinary sense of the words, used with reference to the subject-matter, is. To one mind it may appear that the most that can be said is that the sense may be what is contended by the one side, and that the inconsistency and repugnancy is very great, that you should make a great stretch to avoid such absurdity, and that what is required to avoid it is a very little stretch or none at all. To another mind it may appear that the meaning of the words is perfectly clear, that they can

bear no other meaning at all, and that to substitute any other meaning would be, not to interpret the words used, but to make an instrument for the parties, and that the supposed inconsistency or repugnancy is perhaps a hardship—a thing which, perhaps, it would have been wiser to have avoided, but which we have no power to deal with. This present case is about as good an illustration of that as can very well be.”—*Caledonian Rail. Co. v. North British Rail. Co.* (1881), 6 App. Cas. 114, at p. 131, Lord Blackburn. (Applied by Jessel, M. R., in *Ex parte Walton* (1881), 17 Ch. D. 746, at p. 751; 50 L. J. Ch. 657, at p. 659, and by Chitty, J., in *Spencer v. Metropolitan Board of Works* (1882), 22 Ch. D. 142, at p. 148.)

“It has been stated, on the authority of the Court of Appeal in Scotland [*Baird Trustees v. Inland Revenue* (1888), 25 Scottish Law Reporter, 533; 15 Ct. Sess. Cas., 4th Ser. 682], that where there is an imperial statute applicable to the three Kingdoms, it must be construed according to its popular meaning, not loosely or hypothetically, but as people of ordinary education and intellect would understand it. I should not state this quite in the same way, for I should apply the rule whether the statute to be construed were an imperial statute or not, unless there is something which obliged another construction to be put upon it. But then it is said that the words used in a statute may have acquired a technical or secondary meaning which must be adopted. I think in such a case it must be shown that they have obtained that meaning not in some particular district or with some limited body of persons, but with as large a body as would have to use them in respect of the subject-matter with which they deal. In the case of a statute, if it is one that deals with the whole of the United Kingdom, we should have to see if the technical meaning which has gained reception has done so with as large a body as that to which the statute applies, that is, with the educated people of Great Britain and Ireland. So that if we find the technical meaning accepted by a limited portion only of those people, that is not a sufficient acceptance to override the commonly accepted meaning of the words.”—*The Queen v. Commissioners of Income Tax* (1888), 22 Q. B. D. 296, at p. 306; 58 L. J. Q. B. 196, at p. 199, Lord Esher, M. R.

“An Act of Parliament is to be construed according to the ordinary meaning of the words in the English language as applied to the subject-matter, unless there is some very strong ground, derived from the context, or reason why it should not be so con-

strued.”—*Hornsey Local Board v. Monarch Investment Building Society* (1889), 24 Q. B. D. 1, at p. 5; 59 L. J. Q. B. 105, at p. 106, Lord Esher, M. R.

Dictionary Meaning.

“The definition of a street is thus laid down in the Imperial Dictionary: ‘a street is properly a paved way or road; but in usage, any way or road in a city having houses on one or both sides.’ Now, tried by that test, this is a street: it has houses on both sides of it; and therefore, in common parlance, it is a street. It is really a street.”—*Taylor v. Corporation of Oldham* (1876), 4 Ch. D. 395, at p. 408; 46 L. J. Ch. 105, at p. 109, Jessel, M. R.

“The real question here is the meaning of the word ‘dilute,’ and giving it its ordinary dictionary meaning of ‘to thin, weaken, reduce the strength of,’ I think the appellant clearly diluted Barclay’s beer. There is no manifest incongruity in giving this meaning to the word, and the context clearly shows that this construction is right.”—*Crofts v. Taylor* (1887), 19 Q. B. D. 524, at pp. 528, 529; 56 L. J. M. C. 137, at p. 140, Huddleston, B.

Context.

The plainest words may be controlled by a reference to the context.

“Again, there is no doubt a rule, applicable to Acts of Parliament as well as to other legal instruments, that you may control the plainest words by a reference to the context. But then, as has been said very often, you must have a context even more plain, or at least as plain—it comes to the same thing—as the words to be controlled.”—*Bentley v. Rotherham and Kimberworth Local Board of Health* (1876), 4 Ch. D. 588, at p. 592; 46 L. J. Ch. 284, at p. 286, Jessel, M. R.

“It is beyond dispute, too, that we are entitled, and indeed bound, when construing the terms of any provision found in a statute, to consider any other parts of the Act which throw light upon the intention of the legislature, and which may serve to show that the particular provision ought not to be construed as it would be if considered alone and apart from the rest of the Act.”—*Colquhoun v. Brooks* (1889), 14 App. Cas. 493, at p. 506; 59 L. J. Q. B. 53, at p. 59, Lord Herschell.

B.

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“Or” read as “And.”

“I know no authority for such a proceeding [turning ‘or’ into ‘and’] unless the context makes the necessary meaning of ‘or’ ‘and,’ as in some instances it does: but I believe it is wholly unexampled so to read it, when doing so will, upon one construction, entirely alter the meaning of the sentence, unless some other part of the same statute or the clear intention of it requires that to be done, as in the case of *Fowler v. Padget* [(1798), 7 T. R. 509]. . . . It may, indeed, be doubted whether some of the cases of turning ‘or’ into ‘and,’ and *vice versâ*, have not gone to the extreme limit of interpretation.”—*Mersey Docks and Harbour Board v. Henderson Brothers* (1888), 13 App. Cas. 595, at p. 603; 58 L. J. Q. B. 152, at p. 155, Lord Halsbury, L. C.

General Words and Expressions.

“Their lordships conceive that one of the safest guides to the construction of sweeping general words, which it is difficult to apply in their full literal sense, is to examine other words of like import in the same instrument, and to see what limitations must be imposed on them. If it is found that a number of such expressions have to be subjected to limitations or qualifications, and that such limitations or qualifications are of the same nature, that forms a strong argument for subjecting the expression in dispute to a like limitation or qualification.”—*Blackwood v. The Queen* (1882), 8 App. Cas. 82, at p. 94; 52 L. J. P. C. 10, at p. 14, Sir Arthur Hobhouse, delivering the judgment of the Judicial Committee.

Ejusdem Generis Doctrine.

General words are primâ facie to be taken in their usual sense.

General words following specific words are primâ facie to be taken in their general sense unless the reasonable construction of the statute requires them to be used in a sense limited to things ejusdem generis with those which have been specifically mentioned before.

If the particular words exhaust the whole genus the general word must refer to some larger genus.

“This Act is general, and extends to all persons of what estate or degree soever, and as well to women as to men: for the words be—“if any person,” and *generalia verba sunt generaliter intelligenda*.”—3 *Inst.* cap. 21, p. 76.

“General words in a statute must receive a general construction, unless you can find in the statute itself some ground for

limiting and restraining their meaning by reasonable construction, and not by arbitrary addition or retrenchment."—*Beckford v. Wade* (1805), 17 Ves. 87, at p. 91, Sir William Grant, M. R.

"If general words follow an enumeration of particular cases, such general words are, by another rule of construction, holden to apply only to cases of the same kind as those which are expressly mentioned."—*Fletcher v. Lord Sondes* (1826), 3 Bing. 501, at p. 580, Best, C. J.

"Where general words follow particular ones, the rule is to construe them as applicable to persons *ejusdem generis*."—*Sandiman v. Breach* (1827), 7 B. & C. 96, at p. 100, Lord Tenterden, C. J.

"Large as these words undoubtedly are, we apply to them the ordinary rules for construing Acts of Parliament, laid down by Mr. Dwaris [Part ii. vol. ii.], and acted upon in all times, but nowhere more clearly stated than by Lord Tenterden, in *Sandiman v. Breach* [(1827), 7 B. & C. 96, at p. 100]."—*Kitchen v. Shaw* (1837), 6 Ad. & E. 729, at p. 734, Lord Denman, C. J.

"That case [*Reg. v. Payne* (1866), L. R. 1 C. C. 27; 35 L. J. M. C. 170] falls within the rule that, if the particular words exhaust the whole *genus*, the general word must refer to some larger *genus*."—*Fenwick v. Schmaltz* (1868), L. R. 3 C. P. 313, at p. 315; 37 L. J. C. P. 78, at p. 80, Willes, J.

"When a specific enumeration concludes with a general term, that term is, by a well-known canon of construction, held to be limited to *alia similia*."—*Countess of Rothes v. Kirkcaldy Waterworks Commissioners* (1882), 7 App. Cas. 694, at p. 706, Lord Watson.

"I think that, as a matter of ordinary construction, where several words are followed by a general expression, as here, which is as much applicable to the first and other words as to the last, that expression is not limited to the last, but applies to all. For instance, 'horses, oxen, pigs, and sheep, from whatever country they may come,' the latter words would apply to horses as much as to sheep."—*Great Western Rail. Co. v. Swindon and Cheltenham Rail. Co.* (1884), 9 App. Cas. 787, at p. 808; 53 L. J. Ch. 1075, at p. 1087, Lord Bramwell.

"The proper construction to be put on general words used in an English Act of Parliament is, that Parliament was dealing only with such persons and things as are within the general words and also within its proper jurisdiction, and that we ought to assume that Parliament (unless it expressly declares otherwise), when it

uses general words, is only dealing with persons or things over which it has properly jurisdiction."—*Colquhoun v. Heddon* (1890), 25 Q. B. D. 129, at p. 135; 59 L. J. Q. B. 465, at p. 467, Lord Esher, M. R.

Same Words in different Parts of a Statute.

"We disclaim altogether the assumption of any right to assign different meanings to the same words in an Act of Parliament on the ground of a supposed general intention in the Act."—*The Queen v. Poor Law Commissioners* (1838), 6 A. & E. 56, at p. 68, Lord Denman, C. J.

"It is a sound rule of construction to give the same meaning to the same words occurring in different parts of an Act of Parliament or other document."—*Courtauld v. Legh* (1869), L. R. 4 Ex. 126, at p. 130; 38 L. J. Ex. 45, at p. 49, Cleasby, B.

"I take it also as a general rule in construing statutes that the same words must be *primâ facie* construed in the same sense in the different parts of the statute."—*Spencer v. Metropolitan Board of Works* (1882), 22 Ch. D. 142, at p. 149, Chitty, J.

"The first observation to be made on section 33 [of the Metropolitan Street Improvement Act, 1877 (40 & 41 Vict. c. cccxxv)] is, that we ought to find out its meaning, if we can, from the section itself. If we can do that we need not have recourse to the use of the word 'take' in the other sections of the Act. If we cannot, then I agree with the principle which was laid down by Mr. Justice Chitty, that as a general rule a word is to be considered as used throughout an Act of Parliament in the same sense, and that, therefore, we may look through the other sections to see in what sense the word is there used."—*Ibid.*, at p. 162, Jessel, M. R.

Different Words in the same Statute.

"Where the legislature in the same sentence uses different words, we must presume that they were used in order to express different ideas."—*The King v. Great Bolton* (1828), 8 B. & C. 71, at p. 74, Lord Tenterden, C. J.

"More than a hundred years ago Acts of Parliament were very short, and were to be applied to a variety of cases; but now they are very long, and some of them are framed with all the beauties of style to be gathered from the office of the special pleader, and the office of the conveyancer also."—*Reg. v. Frost* (1840), 9 C. & P. 129, at p. 186, Lord Abinger, C. B.

"It has been a general rule for drawing deeds and other legal documents from the earliest times, which one is taught when one first becomes a pupil to a conveyancer, never to change the form of words unless you are going to change the meaning, and it would be as well if those who are engaged in the preparation of Acts of Parliament would bear in mind that that is the real principle of construction. But in drawing Acts of Parliament, the legislature, as it would seem, to improve the graces of the style, and to avoid using the same words over and over again, constantly change them."—*Hadley v. Perks* (1866), L. R. 1 Q. B. 444, at p. 457; 35 L. J. M. C. 177, at p. 180, Blackburn, J.

"It is a rule of construction that, where in the same Act of Parliament, and in relation to the same subject-matter, different words are used, the Court must see whether the legislature has not made the alteration intentionally, and with some definite purpose; *primâ facie*, such an alteration would be considered intentional."—*Guardians of Parish of Brighton v. Guardians of Strand Union*, [1891] 2 Q. B. 156, at p. 167; 60 L. J. M. C. 105, at p. 112, Lord Esher, M. R.

Phrases in Statutes in *pari materiâ*.

"The several Statutes of Limitations being all in *pari materiâ* ought to receive a uniform construction, notwithstanding any slight variations of phrase, the object and intention being the same."—*Murray v. East India Co.* (1821), 5 B. & Ald. 204, at p. 215, Abbott, C. J.

Words not relating to any Art or Science.

"My lords, I have always thought that, where we are to put a construction upon an Act of Parliament which does not relate, or profess to relate, to some particular subject of art or science, we should understand the words in the Act in the same way as they are understood in the common language of mankind."—*Rex v. Winstanley* (1831), 1 Cr. & J. 434, at p. 444, Lord Tenterden, C. J.

Technical Language.

Primâ facie technical words must have their technical meaning given to them, unless the contrary manifestly appears.

"*Primâ facie* it appears to me that the rule applies, that technical words must have their technical meaning given to them, unless

you can find something in the context to overrule them.”—*Laird v. Briggs* (1881), 19 Ch. D. 22, at p. 34, Jessel, M. R.

“When the legislature uses technical language in its statutes, it is supposed to attach to it its technical meaning, unless the contrary manifestly appears. That is the rule of construction of technical expressions, even when occurring in a will.”—*Burton v. Reeve* (1847), 16 M. & W. 307, at p. 309; 16 L. J. Ex. 85, at p. 86, Parke, B. (Cited by Fry, L. J., in *The Queen v. Commissioners of Income Tax* (1888), 22 Q. B. D. 296, at p. 309; 58 L. J. Q. B. 196, at p. 201.)

Legal Sense.

“In general, the words of an Act of Parliament are to be understood in the sense in which they are *commonly* understood, unless there be anything requiring the legal sense to be adopted.”—*The King v. Townrow* (1830), 1 B. & Ad. 465, at p. 479, Parke, J.

“In construing an Act of Parliament, I apprehend every word must be understood according to the legal meaning, unless it shall appear from the context that the legislature has used it in a popular or more enlarged sense; that is the general rule; but in a penal enactment, where you depart from the ordinary meaning of the words used, the intention of the legislature that those words should be understood in a more large or popular sense, must plainly appear.”—*Stephenson v. Higginson* (1852), 3 H. L. Cas. 638, at p. 686, Lord Truro.

Superfluous Words.

“I adhere to an opinion expressed by myself in the House of Lords more than ten years ago in *Giles v. Melsom* [(1873), L. R. 6 H. L. 24, at p. 33; 42 L. J. C. P. 122], which, unless I am much deceived, I have also heard in substance expressed by great masters of the law, that ‘nothing can be more mischievous than the attempt to wrest words from their proper and legal meaning, only because they are superfluous.’”—*Hough v. Windus* (1884), 12 Q. B. D. 224, at p. 229; 53 L. J. Q. B. 165, at pp. 167, 168, Lord Coleridge, C. J., reading judgment of Lord Selborne, L. C.

Mistakes.

“It is our duty neither to add to nor take from a statute, unless we see good grounds for thinking that the legislature intended some-

thing which it has failed precisely to express.”—*Everett v. Wells* (1841), 2 M. & G. 269, at p. 277; 10 L. J. C. P. 81, at p. 84, Tindal, C. J.

“ We cannot assume a mistake in an Act of Parliament. If we did so, we should render many Acts uncertain by putting different constructions on them according to our individual conjectures. The draftsman of this Act [Sunday Closing (Wales) Act, 1881 (44 & 45 Vict. c. 61, s. 3)] may have made a mistake. If so, the remedy is for the legislature to amend it. But we must construe Acts of Parliament as they are, without regard to consequences, except in those cases where the words are so ambiguous that they may be construed in two senses, and even then we must not regard what happened in Parliament, but look to what is within the four corners of the Act, and to the grievance intended to be remedied, or, in penal statutes, to the offence intended to be corrected.”—*Richards v. McBride* (1881), 8 Q. B. D. 119, at pp. 122, 123; 51 L. J. M. C. 15, at p. 16, Grove, J.

Casus Omissus.

“ A *casus omissus* can in no case be supplied by a court of law, for that would be to make laws.”—*Jones v. Smart* (1785), 1 T. R. 44, at p. 52, Buller, J.

“ Where the conclusion is merely that there is a *casus omissus* for which the legislature has not provided, to alter the ordinary rules of interpretation, upon the principle of a duty due to abstract justice, is simply to legislate, and not to interpret.”—*Ex parte The Vicar of St. Sepulchre's* (1864), 33 L. J. Ch. 372, at p. 374, Lord Westbury, L. C.

“ We ought not to create a *casus omissus* by interpretation save in some case of strong necessity.”—*Mersey Docks and Harbour Board v. Henderson Brothers* (1888), 13 App. Cas. 595, at p. 607; 58 L. J. Q. B. 152, at p. 158, Lord Fitzgerald.

Insensible Phrase.

“ It is a canon of construction that, if it be possible, effect must be given to every word of an Act of Parliament or other document; but that if there be a word or a phrase therein to which no sensible meaning can be given, it must be eliminated.”—*Stone v. Corporation of Yeovil* (1876), 1 C. P. D. 691, at p. 701; 45 L. J. C. P. 657, at pp. 660, 661, Brett, J.

Extraordinary Results.

“Whatever I may think of the extraordinary results which are so caused, it is my duty to interpret Acts of Parliament as I find them. I must read them according to the ordinary rules of construction, that is, literally, unless there is something in the context or in the subject to prevent that reading.”—*Taylor v. Corporation of Oldham* (1876), 4 Ch. D. 395, at p. 405, Jessel, M. R.

Operating unreasonably or absurdly.

“If the Parliament will positively enact a thing to be done which is unreasonable, I know of no power in the ordinary forms of the constitution that is vested with authority to control it; and the examples usually alleged in support of this sense of the rule do none of them prove that where the main object of a statute is unreasonable, the judges are at liberty to reject it, for that were to set the judicial power above that of the legislature, which would be subversive of all government. But where some collateral matter arises out of the general words and happens to be unreasonable, there the judges are in decency to conclude that this consequence was not foreseen by the Parliament, and therefore they are at liberty to expound the statute by equity, and only *quoad hoc* disregard it.”—1 *Bl. Com.* pp. 91, 92.

“It is a good rule in the construction of Acts of Parliament that the judges are not to make the law what they may think reasonable, but to expound it according to the common sense of its words.”—*Biffin v. Yorke* (1843), 6 Scott N. R. 222, at p. 235; 12 L. J. C. P. 162, at p. 165, Cresswell, J.

“If the precise words used are plain and unambiguous, in our judgment, we are bound to construe them in their ordinary sense, even though it do lead, in our view of the case, to an absurdity or manifest injustice. Words may be modified or varied where their import is doubtful or obscure. But we assume the functions of legislators when we depart from the ordinary meaning of the precise words used, merely because we see, or fancy we see, an absurdity or manifest injustice from an adherence to their literal meaning.”—*Abley v. Dale* (1851), 11 C. B. 378, at p. 391; 20 L. J. C. P. 233, at p. 235, Jervis, C. J.

“If the language employed admit of two constructions, and according to one of them the enactment would be absurd and mischievous, and according to the other it would be reasonable.

and wholesome, we surely ought to put the latter construction upon it as that which the legislature intended.”—*The Queen v. Skeen* (1859), 28 L. J. M. C. 91, at p. 94, Lord Campbell, C. J.

“Those established rules [rules of interpretation] no doubt admit of your putting a secondary meaning upon words, where the ordinary and primary signification would lead to some absurdity or some impossibility.”—*Ex parte The Vicar of St. Sepulchre's* (1864), 33 L. J. Ch. 372, at p. 375, Lord Westbury, L. C.

“I hold it to be an essential canon of construction that if the words are susceptible of a reasonable and also of an unreasonable construction, the former construction must prevail.”—*Boon v. Howard* (1874), L. R. 9 C. P. 277, at p. 308; 43 L. J. C. P. 115, at p. 130, Keating, J. (See also *River Wear Commissioners v. Adamson* (1877), 2 App. Cas. 743, at pp. 775, 776; 47 L. J. Q. B. 193, at pp. 208, 209, Lord Gordon.)

“If the apparent logical construction of its language leads to results which it is impossible to believe that those who framed or those who passed the statute contemplated, and from which one's own judgment recoils, there is, in my opinion, good reason for believing that the construction which leads to such results cannot be the true construction of the statute.”—*The Queen v. Clarence* (1888), 22 Q. B. D. 23, at p. 65; 58 L. J. M. C. 10, at p. 32, Lord Coleridge, C. J.

“At the same time, I am far from denying that if it can be shown that a particular interpretation of a taxing statute would operate unreasonably in the case of a foreigner sojourning in this country, it would afford a reason for adopting some other interpretation, if it were possible consistent with the ordinary canons of construction.”—*Colquhoun v. Brooks* (1889), 14 App. Cas. 493, at p. 504; 59 L. J. Q. B. 53, at p. 58, Lord Herschell.

“You are not so to construe the Act of Parliament [Merchant Shipping Act, 1873 (36 & 37 Vict. c. 85)] as to reduce it to rank absurdity. You are not to attribute to general language used by the legislature in this case, any more than any other case, a meaning that would not only carry out its object, but produce consequences which to the ordinary intelligence are absurd. You must give it such a meaning as will carry out its objects.”—*The Duke of Buccleuch* (1889), 15 P. D. 86, at p. 96, Lindley, L. J.

Permissive, Directory, or Enabling Statutes.

“It has been so often decided as to have become an axiom, that in public statutes words only directory, permissive, or enabling,

may have a compulsory force where the thing to be done is for the public benefit or in advancement of public justice.”—*The Queen v. Tithe Commissioners for England and Wales* (1849), 14 Q. B. 459, at p. 474; 19 L. J. Q. B. 177, at p. 182, Coleridge, J., delivering the judgment of the Court.

Optional Statutes.

“We are of opinion that this section [46 of the Railways Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 20)], which in the ordinary meaning of the language used, directs one thing or the other to be done, and does not say which, clearly gives to the party who is to do the act the election to do which he pleases.”—*Reg. v. South Eastern Rail. Co.* (1853), 4 H. L. Cas. 471, at p. 478, Parke, B. (in the name of the Judges answering their Lordships’ questions).

Imperative or Permissive Phrases.

“It has been asked, what language will make a statute imperative if the 54 Geo. III. c. 84 be not so? Negative words would have given it that effect, but those used are in the affirmative only [viz., ‘the quarter sessions for the Michaelmas quarter shall in every year be holden’].”—*The King v. The Justices of Leicester* (1827), 7 B. & C. 6, at pp. 12, 13, Lord Tenterden, C. J.

The words “It shall and may be lawful” import primâ facie a discretion.

“The meaning to be attributed to the phrase ‘it shall and may be lawful’ in a statute, must depend upon the subject-matter in every instance. *Primâ facie* these words import a discretion; and they must be construed as discretionary unless there be anything in the subject-matter to which they are applied, or in any other part of the statute, to show that they are meant to be imperative.”—*Re Newport Bridge* (1859), 2 El. & El. 377, at p. 380; 29 L. J. M. C. 52, at p. 53, Crompton, J.

“*Shall*,” “*may*,” and “*shall and may be lawful*.”

“When a statute declares that something ‘shall’ be done, the language is considered imperative, and the thing must be done; where the word ‘may’ is used, the language is, as a general rule, permissive. No doubt in many cases the phrase ‘shall and may be lawful’ has been construed as imperative by the Courts, having regard to the object of the provision and to the context and the rule above mentioned, and it seems that they have so construed

the word 'may' standing alone, as in *Reg. v. Barclay* [(1881), 8 Q. B. D. 306; 51 L. J. M. C. 27].”—*Davies v. Evans* (1882), 9 Q. B. D. 238, at pp. 242, 243; 51 L. J. M. C. 132, at p. 136, Grove, J.

The words “it shall be lawful” are naturally permissive and enabling only, unless coupled with a duty, when they are obligatory.

“The words ‘it shall be lawful’ are not equivocal. They are plain and unambiguous. They are words merely making that legal and possible which there would otherwise be no right or authority to do. They confer a faculty or power, and they do not of themselves do more than confer a faculty or power. But there may be something in the nature of the thing empowered to be done, something in the object for which it is to be done, something in the conditions under which it is to be done, something in the title of the person or persons for whose benefit the power is to be exercised, which may couple the power with a duty, and make it the duty of the person in whom the power is reposed to exercise that power when called upon to do so. Whether the power is one coupled with a duty such as I have described is a question which, according to our system of law, speaking generally, it falls to the Court of Queen’s Bench to decide, on an application for a mandamus. And the words ‘it shall be lawful’ being, according to their natural meaning, permissive and enabling words only, it lies upon those, as it seems to me, who contend that an obligation exists to exercise this power, to show in the circumstances of the case something which, according to the principles I have mentioned, creates the obligation.”—*Julius v. Lord Bishop of Oxford* (1880), 5 App. Cas. 214, at pp. 222, 223; 49 L. J. Q. B. 577, at p. 578, Earl Cairns, L. C.

“I do not think the words ‘it shall be lawful’ are in themselves ambiguous at all. They are apt words to express that a power is given; and as, *prima facie*, the donee of a power may either exercise it or leave it unused, it is not inaccurate to say that, *prima facie*, they are equivalent to saying that the donee may do it; but if the object for which the power is conferred is for the purpose of enforcing a right, there may be a duty cast on the donee of the power, to exercise it for the benefit of those who have that right, when required on their behalf. Where there is such a duty, it is not inaccurate to say that the words conferring the power are

equivalent to saying that the donee must exercise it. It by no means follows that because there is a duty cast on the donee of a power to exercise it, that mandamus lies to enforce it; that depends on the nature of the duty and the position of the donee.”—*Julius v. Lord Bishop of Oxford* (1880), 5 App. Cas. 214, at p. 241; 49 L. J. Q. B. 577, at p. 588, Lord Blackburn.

When the terms of a statute are permissive only, the discretion thereby conferred is intended to be exercised in strict conformity with private rights.

“Where the terms of the statute are not imperative, but permissive, when it is left to the discretion of the persons empowered to determine whether the general power committed to them shall be put into execution or not, I think the fair inference is that the legislature intended that discretion to be exercised in strict conformity with private rights, and did not intend to confer licence to commit nuisance in any place which might be selected for that purpose.”—*Metropolitan Asylum District v. Hill* (1881), 6 App. Cas. 193, at p. 213; 50 L. J. Q. B. 353, at pp. 364, 365, Lord Watson.

Obligatory or Directory.

“In construing Acts of Parliament, provisions which appear on the face of them obligatory, cannot, without strong reasons given, be held only directory.”—*Barker v. Palmer* (1881), 8 Q. B. D. 9, at p. 10; 51 L. J. Q. B. 110, Grove, J.

Restriction.

“When from the nature of the provision contained in an Act of Parliament it is clear that a restriction must be put upon the ordinary and literal signification of some word or expression, and it is uncertain from anything to be found in the Act itself, or in the circumstances judicially cognisable under which the provision was inserted, what the exact character and extent of that restriction is, it is the duty of the Courts to put no greater restriction than the nature of the provision and the subject-matter to which it relates necessarily impose.”—*Sullivan v. Mitcalfe* (1880), 5 C. P. D. 455, at pp. 459, 460; 49 L. J. C. P. 815, at pp. 828, 829, Thesiger, L. J.

“In this proviso the legislature have used language of the widest kind—‘in all cases’—so wide that if its full grammatical

meaning be given to it, the proviso will produce injustice so enormous that the mind of any reasonable man must revolt from it. When the language of the legislature, construed literally, involves such consequences, the Court has, over and over again, acted upon the view that the legislature could not have intended to produce a result which would be palpably unjust and would revolt the mind of any reasonable man, unless they have manifested that intention from the use of merely general words. Some limit must, therefore, be put upon the words of the proviso, and they must be limited with reference to the subject-matter which is treated of."—*In re Brockelbank* (1889), 23 Q. B. D. 461, at pp. 462, 463; 58 L. J. Q. B. 375, at p. 376, Lord Esher, M. R.

"It seems to us that the canon of construction laid down in *Stradling v. Morgan* [(1560), Plowd. 199, at p. 205a], and cited by the Lord Chancellor [Halsbury] in the recent case of *Cox v. Hakes* [(1890) 15 App. Cas. 506, at p. 518; 60 L. J. Q. B. 89, at p. 94], may be invoked with regard to the present controversy. 'From which cases it appears that the sages of the law heretofore have construed statutes quite contrary to the letter in some appearance, and those statutes which comprehend all things in the letter, they have expounded to extend but to some things, and those which generally prohibit all people from doing such an act, they have interpreted to permit some people to do it, and those which include every person in the letter they have adjudged to reach to some persons only, which expositions have always been founded on the intent of the legislature, which they have collected sometimes by considering the cause and necessity of making the Act, sometimes by comparing one part of the Act with another, and sometimes by foreign circumstances. So that they have ever been guided by the intent of the legislature, which they have always taken according to the necessity of the matter and according to that which is consonant to reason and good discretion.'"—*In re Standard Manufacturing Company*, [1891] 1 Ch. 627, at pp. 646, 647; 60 L. J. Ch. 292, at pp. 300, 301, Bowen, L. J., delivering the judgment of the Court.

Extension.

"But it is a familiar rule of construction that, although the Court are *prima facie* bound to read the words of an Act according to their ordinary meaning in the language, if there are other circumstances which show that the words must have been used by

the legislature in a sense larger than their ordinary meaning, the Court is bound to read them in that sense.”—*Barlow v. Ross* (1890), 24 Q. B. D. 381, at p. 389; 59 L. J. Q. B. 183, at p. 186, Lord Esher, M. R.

Implied Words.

“It is not easy to conceive that the framer of that Act [Lord Brougham’s Act, 1850 (13 & 14 Vict. c. 21), s. 4], when he used the word ‘expressly,’ meant to suggest that what is necessarily or properly implied by language is not expressed by such language. It is quite clear that whatever the language used necessarily and naturally implies is expressed thereby.”—*Chorlton v. Lings* (1868), L. R. 4 C. P. 374, at p. 387; 38 L. J. C. P. 25, at p. 31, Willes, J.

SECTION VI.

	PAGE
Effect on Common Law	158
Effect on Customs	159
Effect on pre-existing Rights	159
Effect on Contracts	160
Equitable Construction	160
Rational and Beneficial Construction	161
Argument from Inconvenience	161
Injury to Third Parties	162
Construction producing Injustice... ..	162
Time	164
Several Statutes to be construed as One... ..	165
Statutes <i>in pari materia</i>	165
Consolidation of Statutes	167
Amending Statute	168
Codification	168
<i>Contemporanea Expositio</i>	169
Decisions on Statutes	170
Practice	174

Effect on Common Law.

The common law gives place to statutes.

“Blackstone, the highest constitutional and legal authority with reference to the law of England, when treating of statute law, states [vol. i. p. 89], ‘Where the common law and a statute differ, the common law gives place to the statute.’”—*River Wear Commissioners v. Adamson* (1877), 2 App. Cas. 743, at p. 775; 47 L. J. Q. B. 193, at p. 208, Lord Gordon.

"The Acts in question [Merchant Shipping Acts] seem to me to be valuable ones, and the fact that they interfere with a plaintiff's common law rights is no reason why they should be construed differently from any other Acts of Parliament."—*The Warkworth* (1883), 9 P. D. 20, at p. 21; 53 L. J. P. 4, at p. 5, Butt, J.

Effect on Customs.

Customs, or rights of a similar description, are not to be taken away by inference or without distinct words.

"There is no doubt that as a general rule, customs or rights of a similar description are not to be taken away by inference or without distinct words."—*Green v. The Queen* (1876), 1 App. Cas. 513, at p. 535, Lord Cairns, L. C.

Effect on Pre-existing Rights.

The giving of a new right does not of necessity destroy a previously existing right.

Statutes do not take away private rights except by express words or by plain implication.

"I do not dispute the general proposition that an affirmative statute giving a new right does not of itself and of necessity destroy a previously existing right. But it has that effect if the apparent intention of the legislature is that the two rights should not exist together."—*O'Flaherty v. M'Dowell* (1857), 6 H. L. Cas. 142, at p. 157, Lord Cranworth, L. C.

"The canon of construction applicable to such a statute [Dominion Act, 37 Vict. c. 16] is, that it must not be deemed to take away or extinguish the right of the respondent company, unless it appear, by express words or by plain implication, that it was the intention of the legislature to do so. That principle was affirmed in *Barrington's Case* [(1611), 4 Coke, p. 416, Part VIII. 138 a], and was recognized in the recent case of *The River Wear Commissioners v. Adamson* [(1877), 2 App. Cas. 743; 47 L. J. Q. B. 193]. The enunciation of the principle is, no doubt, much easier than its application. Thus far, however, the law appears to be plain—that, in order to take away the right, it is not sufficient to show that the thing sanctioned by the Act, if done, will of sheer physical necessity put an end to the right; it must also be shown that the legislature have authorized the thing to be done at all events, and irrespective of

its possible interference with existing rights.”—*Western Counties Rail. Co. v. Windsor and Annapolis Rail. Co.* (1882), 7 App. Cas. 178, at pp. 188, 189; 51 L. J. P. C. 43, at p. 48, Lord Watson, delivering the judgment of the Judicial Committee.

Effect on Contracts.

“Where the question is, whether a covenant be repealed by Act of Parliament? this is the difference, viz., where H. covenants not to do an act or thing which was lawful to do, and an Act of Parliament comes after and compels him to do it, the statute repeals the covenant. So, if H. covenants to do a thing which is lawful, and an Act of Parliament comes in and hinders him from doing it, the covenant is repealed. [Vide Dyer, 27, pl. 278.] But if a man covenants not to do a thing which then was unlawful, and an Act comes and makes it lawful to do it, such Act of Parliament does not repeal the covenant.”—*Brewster v. Kitchell* (1698), Salk. p. 198, *per cur.*

“I think every contract, which does not *expressly* provide to the contrary, must be considered as made with reference to the existing state of the law; and if, by the intervention of the legislature, a change is made in the law, which in any degree affects the contract, such contract, made without some clear and distinct reference to the prospect or possibility of a change in the law, does not hold with reference to the state of things as altered by the new law. I am not aware there is any authority which expressly decides this, but also I am not aware that there is any authority to the contrary. And I think the intervention of the legislature, in altering the situation of the contracting parties, in principle, is analogous to a convulsion of nature, against which parties may provide; but if they have not provided, it would generally be considered as excepted out of the contract.”—*Oswald v. Berwick* (1854), 3 E. & B. 653, at p. 678; 23 L. J. Q. B. 321, at p. 331, Pollock, C. B.

(See also *Gowan v. Wright* (1886), 18 Q. B. D. 201, at p. 204; 56 L. J. Q. B. 131, at p. 132, Lord Esher, M. R., *post*, p. 164.)

Equitable Construction.

“As for construing the statute by equity, equity is synonymous to the meaning of the legislator.”—*The King v. Williams* (1758), 1 Wm. Bl. 93, at p. 95, Mansfield, C. J., *et tot. cur.*

Rational and beneficial Construction.

"It is the duty of the Court to find out what the meaning of the legislature is, and to attach a rational and beneficial meaning if possible, rather than an irrational and an injurious meaning, to the statutes which have been passed by the legislature."—*Mersey Steel and Iron Co. v. Naylor* (1882), 9 Q. B. D. 648, at p. 660; 51 L. J. Q. B. 576, at p. 584, Jessel, M. R.

The more reasonable of two constructions to be adopted.

"I quite agree that no Court is entitled to depart from the intention of the legislature as appearing from the words of the Act, because it is thought unreasonable. But where two constructions are open, the Court may adopt the more reasonable of the two."—*Countess of Rothes v. Kirkcaldy Waterworks Commissioners* (1882), 7 App. Cas. 694, at p. 702, Lord Blackburn.

"The rules for the construction of statutes are very like those which apply to the construction of other documents, especially as regards one crucial rule, viz., that if it is possible, the words of a statute must be construed so as to give a sensible meaning to them. The words ought to be construed *ut res magis valeat quam pereat*."—*Curtis v. Stovin* (1889), 22 Q. B. D. 513, at p. 517; 58 L. J. Q. B. 174, at p. 175, Bowen, L. J.

Argument from Inconvenience.

The argument from inconvenience is not to be lightly entertained.

"We have been strongly pressed with the inconveniences that may result from this construction of the statute. We are not insensible to them; but the only proper effect of that argument is to make the Court cautious in forming its judgment. We cannot, on that account, put a forced construction on the Act of Parliament (57 Geo. III. c. 99)."—*Hall v. Franklin* (1838), 3 M. & W. 259, at p. 275, Lord Abinger, C. B.

"The general rule for the construction of Acts of Parliament is that the words are to be read in their popular, natural, and ordinary sense, giving them a meaning to their full extent and capacity, unless there is reason upon their face to believe that they were not intended to bear that construction, because of some inconvenience which could not have been absent from the mind of the framers of the Act, which must arise from the giving them

such large sense.”—*Birks v. Allison* (1862), 13 C. B. N. S. 12, at p. 23; 32 L. J. C. P. 51, at p. 55, Byles, J.

“The argument from inconvenience is not to be lightly entertained, and never for the purpose of construing a statute which is clear in its terms, and indicates, unmistakeably, the purpose of the legislature. When the words are obscure, and the purpose, therefore, more or less doubtful, it may help to a right understanding of them.”—*Hutton v. Harper* (1876), 1 App. Cas. 464, at p. 474, Lord O’Hagan.

“With regard to inconvenience, I think that that is a most dangerous doctrine. I agree if the inconvenience is not only great, but what I may call an absurd inconvenience, by reading an enactment in its ordinary sense, whereas if you read it in a manner in which it is capable, though not in its ordinary sense, there would not be any inconvenience at all, there would be reason why you should not read it according to its ordinary grammatical meaning.”—*The Queen v. Overseers of Tonbridge* (1884), 13 Q. B. D. 339, at p. 342; 53 L. J. Q. B. 488, at p. 491, Brett, M. R.

Injury to Third Parties.

“On principle it is certainly desirable, in construing a statute, if it be possible, to avoid extending it to collateral effects and consequences beyond the scope of the general object and policy of the statute itself, and injurious to third parties with whose interests the statute need not and does not profess to directly deal.”—*East and West India Dock Co. v. Hill* (1882), 22 Ch. D. 14, at p. 23; 52 L. J. Ch. 44, at p. 47, Lord Selborne, L. C.

Construction producing Injustice.

The legislature must not be supposed to intend to do an injustice.

“If the precise words used are plain and unambiguous, in our judgment, we are bound to construe them in their ordinary sense, even though it do lead, in our view of the case, to an absurdity or manifest injustice. Words may be modified or varied where their import is doubtful or obscure. But we assume the functions of legislators when we depart from the ordinary meaning of the precise words used, merely because we see, or fancy we see, an absurdity or manifest injustice from an adherence to their literal meaning.”—*Abley v. Dale* (1851), 11 C. B. 378, at p. 391; 20 L. J. C. P. 233, at p. 235, Jervis, C. J.

“The Vice-Chancellor [Kindersley] is of opinion, that what he denominates the abstract justice of the case, requires this interpreta-

tion. I cannot concur in that reasoning, I think it is impossible to take those words apart from the context; and I cannot admit the principle, that in a matter of positive law, abstract justice requires or justifies any departure from the established rules of interpretation. Those established rules, no doubt, admit of your putting a secondary meaning upon words, where the ordinary and primary signification would lead to some absurdity or some impossibility. But where the conclusion is merely that there is a *casus omissus*, for which the legislature has not provided, to alter the ordinary rules of interpretation, upon the principle of a duty due to abstract justice, is simply to legislate, and not to interpret."—*Ex parte The Vicar of St. Sepulchre's* (1864), 33 L. J. Ch. 372, at p. 374, Lord Westbury, L. C.

"No doubt when a case of hardship is pointed out in a statute, it makes the construction which leads to it more improbable than if it led to a reasonable and just condition of things."—*Rusby v. Newson* (1875), L. R. 10 Ex. 322, at p. 329; 44 L. J. Ex. 143, at p. 144, Bramwell, B.

"Now I think it will be seen, as to the first point for which he [the counsel] contended, that he did not bring it within the rule which is applicable to construction when you are relying on the doctrine of injustice, which rule, I apprehend, is this: where a statute is capable of two constructions, one of which will work manifest injustice, and the other will work no injustice, you are to assume that the legislature intended that which would work no injustice. But where the injustice relied upon may be called, if it is injustice at all, injustice to one class, and the opposite construction would apply the same kind of injustice to another class, then this is no argument at all; neither is it any argument unless the injustice is manifest, so that it must have been present to the mind of those who were passing the Act of Parliament."—*The Queen v. Monck* (1877), 2 Q. B. D. 544, at pp. 554, 555; 46 L. J. M. C. 251, at p. 257, Brett, J. A.

I think also that there is a general rule of construction of statutes which is applicable to this matter, namely, that unless you are obliged to do so, you must not suppose that the legislature intended to do a palpable injustice."—*Ex parte Corbett* (1880), 14 Ch. D. 122, at p. 129; 49 L. J. Bk. 74, at p. 77, Brett, L. J.

"If an enactment is such that by reading it in its ordinary sense you produce a palpable injustice, whereas by reading it in a sense which it can bear, although not exactly its ordinary sense, it will

produce no injustice, then I admit one must always assume that the legislature intended that it should be so read as to produce no injustice.”—*The Queen v. Overseers of Tonbridge* (1884), 13 Q. B. D. 339, at p. 342; 53 L. J. Q. B. 488, at p. 491, Brett, M. R.

“When the words of an Act of Parliament, being read in their ordinary meaning, are capable of an interpretation which will work manifest injustice, yet if it is possible within the bounds of any grammatical or reasonable construction to read the Act so that it will not commit a manifest injustice, the Court ought to construe it upon the assumption that the legislature did not intend, by the words that it has used, to enact that which will perpetrate a manifest injustice.”—*Plumstead Board of Works v. Spackman* (1884), 13 Q. B. D. 878, at p. 887; 53 L. J. M. C. 142, at p. 145, Brett, M. R.

“Is there, then, any general rule of construction applicable to such a provision which enables us to limit the meaning of the words so as to prevent the defendant from doing what he seeks to do? I find in Maxwell on the Interpretation of Statutes, p. 184, in a section headed ‘Construction against impairing obligations, or permitting advantage from one’s own wrong,’ the principle resulting from the various authorities there collected expressed as follows:—‘On the general principle of avoiding injustice and absurdity any construction would be rejected, if escape from it were possible, which enabled a person to defeat a statute or impair the obligation of his contract by his own act or otherwise to profit by his own wrong.’ Of this the author gives many instances.”—*Gowan v. Wright* (1886), 18 Q. B. D. 201, at p. 204; 56 L. J. Q. B. 131, at p. 132, Lord Esher, M. R.

“A very strong case of injustice arising from giving the language of an Act of Parliament its natural meaning must be made out before the Court will construe a section in a way contrary to the natural meaning of the language used.”—*In re Hall* (1888), 21 Q. B. D. 137, at pp. 141, 142; 57 L. J. Q. B. 494, at p. 496, Cave, J. (See also *In re Brockelbank* (1889), 23 Q. B. D. 461, at pp. 462, 463; 58 L. J. Q. B. 375, at p. 376, Lord Esher, M. R., *ante*, pp. 156, 157.)

Time—Greenwich or Dublin Mean Time.

Statutes (Definition of Time) Act, 1880 (43 & 44 Vict. c. 9)
[2nd August, 1880].

Sect. 1. “Whenever any expression of time occurs in any Act of Parliament, deed, or other legal instrument, the time referred

[*sic*] shall, unless it is otherwise specifically stated, be held in the case of Great Britain to be Greenwich mean time, and in the case of Ireland, Dublin mean time." (See also *ante*, p. 41.)

Several Acts to be construed as One.

"That clause [that two Acts are to be read as one] is frequently inserted in modern Acts of Parliament; but if the two Acts be *in pari materiâ*, the construction would be the same without it."—*Waterlow v. Dobson* (1857), 27 L. J. Q. B. 55, Lord Campbell, C. J.

"We must assume, then, that Robert V. Mather in this nomination paper is a misnomer. Is it one which is cured by sect. 142 of the Municipal Corporations Act [5 & 6 Will. IV. c. 76]? The 13th section of the Municipal Elections Act, 1875, incorporates the former Act, but unfortunately it does so in these words: 'This Act shall, as far as consistent with the tenor thereof, be construed as one with the Act 5 & 6 Will. IV. c. 76, and the Acts amending the same,' &c. It does not say that the provision in sect. 142 of the former Act shall be extended to the later Act, but merely that it shall be construed as one with it. These terms do not seem to me to extend the operation of the amending section in the earlier Act to a document which had no existence then, and therefore could not have been in the contemplation of the legislature."—*Mather v. Brown* (1876), 1 C. P. D. 596, at p. 601; 45 L. J. C. P. 547, at p. 549, Lord Coleridge, C. J.

Statutes in *Pari Materiâ*.

Where there are different statutes in pari materiâ, though made at different times, or even expired, and not referring to each other, they shall be taken and construed together as one system and as explanatory of each other.

"Where there are different statutes *in pari materiâ*, though made at different times, or even expired, and not referring to each other, they shall be taken and *construed together*, as one system, and as explanatory of each other. So, in the laws concerning church leases: and those concerning bankrupts. And so also I consider, all the statutes providing for the poor, as *one system* relative to that subject."—*The King v. Lordale* (1758), 1 Burr. 445, at p. 447, Lord Mansfield, C. J.

"The several Statutes of Limitations being all *in pari materiâ* ought to receive a uniform construction, notwithstanding any slight variations of the phrase, the object and intention being the same."

—*Murray v. East India Co.* (1821), 5 B. & Ald. 204, at p. 215, Abbott, C. J.

“Although it has been repealed, still, upon a question of construction arising upon a subsequent statute on the same branch of the law, it may be legitimate to refer to the former Act. Lord Mansfield, in the case of *The King v. Lordale* [(1758), 1 Burr. 445, at p. 447], thus lays down the rule—‘Where there are different statutes *in pari materia*, though made at different times, or even expired, and not referring to each other, they shall be taken and construed together, as one system, and as explanatory of each other.’ [And Lord Mansfield added, ‘So, in the laws concerning church leases: and those concerning bankrupts. And so also I consider all the statutes providing for the poor, as *one system* relative to that subject.’]”—*Ex parte Copeland* (1852), 2 D. M. & G. 914, at p. 920; 22 L. J. Bank. 17, at p. 21, Knight Bruce, L. J.

“Where an Act of Parliament has received a judicial construction putting a certain meaning on its words, and the legislature in a subsequent Act *in pari materia* uses the same words, there is a presumption that the legislature used those words intending to express the meaning which it knew had been put upon the same words before; and, unless there is something to rebut that presumption, the Act should be so construed, even if the words were such that they might originally have been construed otherwise.”—*Mersey Docks v. Cameron* (1864), 11 H. L. Cas. 443, at pp. 480, 481; 35 L. J. M. C. 1, at pp. 15, 16, Blackburn, J., reading the opinion of the majority of the judges.

“I think, too, that we are entitled to consider the subsequent legislation *in pari materia*; for where two statutes dealing with the same subject-matter use different language, it is an acknowledged rule of construction that one may be looked at as a guide to the construction of the other.”—*Dickenson v. Fletcher* (1873), L. R. 9 C. P. 1, at pp. 7, 8; 43 L. J. M. C. 25, Brett, J.

“It is a clear rule of construction that, where you find a construction has been put upon words in a former Act, which is *in pari materia* with the one under consideration, and when you find that the same words are used in the later Act as in the former, you must apply the same construction to the later Act.”—*Hodgson v. Bell* (1890), 24 Q. B. D. 525, at p. 528; 59 L. J. Q. B. 231, at p. 232, Lord Esher, M. R.

“In construing the words in the present case, the Court has a right to look to the surrounding circumstances—to the facts which must have been known to the legislature when the statute was

passed—above all, to the language of the class of statutes of which this is one. . . . I think, also, that the same rule of *noscitur a sociis* applies in another form, because the previous five or six exemptions, which this exemption immediately follows, are all exemptions having relation to documents drawn by public officers when dealing with public money.”—*Committee of London Clearing Bankers v. Commissioners of Inland Revenue*, [1896] 1 Q. B. 222, at pp. 227, 228, Wright, J.

Consolidation of Statutes.

“Now the circumstances under which this Act [The Merchant Shipping Act, 1854 (17 & 18 Vict. c. 104)] was passed, and the preamble of the Act in fact resolve themselves into one question. Preamble of the Act there is none beyond the recital ‘that it is expedient to amend and consolidate the Acts relating to merchant shipping.’ Therefore the circumstances under which it was passed are exactly narrated in the preamble. The Act was passed with the intention of consolidating and amending (which opens a little wider the question as to the law) the Acts relating to merchant shipping. With reference to the subject of consolidation and amendment, it is a question always of grave difficulty, and it has especially been felt to be so by those who have had to deal with the subject of the consolidation of the statutes in general, and who have had to consider how far the object they have in view is to be attained by a process of mere consolidation, and how far amendments should be allowed. What will be the effect of introducing the identical words of a former statute, but denuded of the preamble which has hitherto formed in some degree a key to its construction? What, again, will be the effect of combining the words introduced from a former statute with other clauses introduced by way of consolidation into the new statute, and which may have the effect of attaching to the words of the earlier Acts a construction entirely different from that which has hitherto prevailed upon these very words as they stand in their original context? In consolidating various statutes—the Statutes of Uses, for instance, and many others which have been the subject of numerous judicial interpretations—one sees at once the extreme difficulties to which such processes would give rise.”—*Cope v. Doherty* (1858), 4 K. & J. 367, at p. 376; 27 L. J. Ch. 600, at pp. 601, 602, Sir W. Page Wood, V.-C. (See also *Greaves* on Criminal Law Consolidation Acts (1861), pp. 3, 4, cited by Brett, J., in *The Queen v. Prince* (1875), L. R. 2 C. C. R. 154, at p. 161; 44 L. J. M. C. 122, at p. 131.)

"The Sheriffs Act, 1887 (50 & 51 Vict. c. 55), is a consolidating Act, and does not profess to amend or alter the provisions of the Acts consolidated. *Primâ facie*, therefore, the same effect ought to be given to its provisions as was given to those of the Acts for which it was substituted."—*Mitchell v. Simpson* (1890), 25 Q. B. D. 183, at p. 190; 59 L. J. Q. B. 355, at p. 359, Fry, L. J.

Amending Statute.

Larger words used in an amending Act.

"The true rule of interpretation, where larger words are used in an amending Act than were used in the principal Act, is that such larger words were used intentionally, and must have a meaning given to them accordingly."—*Hurlbatt v. Barnett & Co.* (1892), [1893] 1 Q. B. 77, at p. 79; 62 L. J. Q. B. 1, at pp. 2, 3, Lord Esher, M. R.

Codification.

"I am wholly unable to adopt the view that where a statute is expressly said to codify the law, you are at liberty to go outside the code so created, because, before the existence of that code, another law prevailed."—*Bank of England v. Vagliano Brothers*, [1891] A. C. 107, at p. 120; 60 L. J. Q. B. 145, at p. 151, Lord Halsbury, L. C.

"I think the proper course [in dealing with such a statute as the Bills of Exchange Act, 1882 (45 & 46 Vict. c. 61), which was intended to be a code of the law relating to negotiable instruments] is in the first instance to examine the language of the statute and to ask what is its natural meaning, uninfluenced by any considerations derived from the previous state of the law, and not to start with inquiring how the law previously stood, and then, assuming that it was probably intended to leave it unaltered, to see if the words of the enactment will bear an interpretation in conformity with this view.

"If a statute, intended to embody in a code a particular branch of the law, is to be treated in this fashion, it appears to me that its utility will be almost entirely destroyed, and the very object with which it was enacted will be frustrated. The purpose of such a statute surely was that on any point specifically dealt with by it, the law should be ascertained by interpreting the language used, instead of, as before, by roaming over a vast number of authorities in order to discover what the law was, extracting it by a minute critical examination of the prior decisions, dependent upon a know-

ledge of the exact effect even of an obsolete proceeding such as a demurrer to evidence. I am of course far from asserting that resort may never be had to the previous state of the law for the purpose of aiding in the construction of the provisions of the code. If, for example, a provision be of doubtful import, such resort would be perfectly legitimate.”—*Ibid.*, at pp. 144, 145; L. J. at p. 164, Lord Herschell.

(See also *Robinson v. Canadian Pacific Rail. Co.*, [1892] A. C. 481, at p. 487; 61 L. J. P. C. 79, Lord Watson, delivering the judgment of the Judicial Committee; and *In re Budgett*, [1894] 2 Ch. 557, at p. 559; 63 L. J. Ch. 847, at p. 849, Chitty, J.)

Contemporanea Expositio.

Usage.

“But I cannot go along with his lordship [the Lord Justice Clerk] when for this reason he denies that usage, however long and inveterate, could be binding and operative on the parties. It can be binding and operative upon the parties only as it is the interpreter of a doubtful law, as affording a contemporary interpretation; but it is quite plain that, as against a plain statutory law, no usage is of any avail. But this undeniable proposition supposes the statute to speak a language plainly and indubitably differing from the purport of the usage. Where the statute, speaking on some points, is silent as to others, usage may well supply the defect, especially if it is not inconsistent with the statutory directions, where any are given; or where the statute uses a language of doubtful import, the acting under it for a long course of years may well give an interpretation to that obscure meaning, and reduce that uncertainty to a fixed rule, *optimus legis interpretes consuetudo*, which is sometimes termed *contemporanea expositio*; and where you can carry back the usage for a century and have no proof of a contrary usage before that time, you fairly reach the period of *contemporanea expositio*.”—*Magistrates of Dunbar v. Duchess of Roxburghe* (1835), 3 Cl. & F. 335, at pp. 353, 354, Lord Brougham.

State of law and public sentiment.

“It has ever been held that, to construe aright an ancient statute, regard must be had to the general state of the law and of public sentiment at the time it passed.”—*Mr. William v. Adams* (1852), 1 Macq. H. L. Cas. 120, at p. 137, Lord Truro.

“But, my Lords, it has often been held, and not unwisely or

improperly, that the construction of very ancient statutes may be elucidated by what, in the language of the Courts, is called *contemporanea expositio*: that is, seeing how they were understood at the time.”—*Montrose Peerage* (1853), 1 Macq. H. L. Cas. 401, at p. 406, Lord Cranworth, L. C.

“I quite admit that from 1869 (the time at which a particular franchise was given) down to 1889 is too short a time to give rise to what is called *contemporanea expositio*, and to fix beyond dispute a meaning upon words which might be doubtful in themselves, yet it is not a matter altogether to be left out of sight in construing these statutes.”—*Beresford-Hope v. Lady Sandhurst* (1889), 23 Q. B. D. 79, at p. 91; 58 L. J. Q. B. 316, at p. 324, Lord Coleridge, C. J.

Decisions on Statutes.

The true interpretation of a statute is departed from where a uniform course of judicial decisions has established a different interpretation.

Where the legislature uses expressions which have been judicially interpreted in a particular sense, it is assumed that they are used in that sense.

A recent statute should generally be construed without reference to decisions on earlier statutes.

“Where there are conflicting decisions upon the construction of a statute, the Court must refer to that which is, and ought to be, the source of all such decisions, that is, the words of the statute itself.”—*The King v. Leek-Wootton* (1812), 16 East 118, at p. 122, Lord Ellenborough, C. J.

“Originally the Act of Parliament in question (22 & 23 Car. II. c. 9) did not receive that construction which the language of it seems to warrant; but we are bound by the weight of authority, and however we may regret that the true construction of the Act seems to have been departed from, we cannot now put that construction upon it, which, unfettered by authority, we might be inclined to do.”—*Booth v. Ibbotson* (1827), 1 Y. & J. 354, at p. 360, Hullock, B.

“But we are bound to construe every statute according to the plain and ordinary import of its words, and to act upon that construction, unless we should find ourselves bound by an uniform course of well-considered decisions, giving a different effect to the provisions of the statute; or unless that construction would lead to such consequences, that we can safely pronounce that the legislature must have had a different intention from that which the ordinary import of the words conveys.”—*The King v. Inhabitants of Great*

Driffeld (1828), 8 B. & C. 684, at p. 690, Bayley, J., delivering the judgment of the Court.

"It cannot be denied that in some cases the plain meaning of an Act of Parliament has been changed by a course of judicial decisions, each going a little and a little further, so that at length the Courts have adopted a construction widely different from that which would, but for such interpretations, have been put upon the plain intent of the words. In all such cases you are to take into consideration, not merely the words of the Act of Parliament, but the decisions on them, which may have been said to have been all but imported into the words of the Act, so that the Act is to be construed with reference to such decisions. But I am not aware of any case in which a single decision, even of a Court of competent jurisdiction having before it properly and judicially the matter on which it was pronouncing a judicial decision, has been held to operate so upon the plain meaning of a statute."—*Earl of Waterford's Claim* (1832), 6 Cl. & F. 133, at p. 172, Lord Cottenham, L. C.

"It is our duty to construe the statute according to the grammatical meaning of the words, unless some absurdity would ensue from so construing it, or an uniform series of decisions had already established a particular construction."—*Doe d. Ellis v. Owens* (1842), 10 M. & W. 514, at p. 521; 12 L. J. Ex. 53, at p. 56, Parke, B.

"The difficulty arises from the vague manner in which the legislature has expressed its meaning; and, therefore, when once a construction has been put upon such a clause [2nd section of the Pilotage Act, 1825 (6 Geo. IV. c. 125)] by a judicial decision, that ought of itself to be a sufficient authority for our adopting the same construction."—*Williams v. Newton* (1845), 14 M. & W. 747, at p. 757; 15 L. J. Ex. 11, at p. 16, Rolfe, B.

"It is therefore of considerable importance to ascertain what has been deemed to be the legal import and meaning of them [the words 'beyond the seas'], because if it shall appear that they have long been used in a sense which may not improperly be called technical, and have been judicially construed to have a certain meaning, and have been adopted by the legislature in that sense long prior to the statute 21 James I. c. 16, the rule of construction of statutes will require that the words in the statute should be construed according to the sense in which they have been so previously used, although that sense may vary from the strict literal meaning of them."—*Ruckmaboye v. Lulloobhoy* (1851-2), 8 Moore P. C. C. 4, at p. 20; 5 Moore Ind. App. 234, at p. 250,

Sir John Jervis, C. J., delivering the judgment of the Judicial Committee.

"Where once certain words in an Act of Parliament have received a judicial construction in one of the superior Courts, and the legislature has repeated them without any alteration in a subsequent statute, I conceive that the legislature must be taken to have used them according to the meaning which a Court of competent jurisdiction has given them."—*Ex parte Campbell* (1870), L. R. 5 Ch. 703, at p. 706, James, L. J.

"Assuming that a judge thinks the construction to be clear one way, but a series of authorities is produced, being decisions of judges of co-ordinate jurisdiction the other way, there must be a time at which the judge is bound by them. If one authority were produced to me, and my own opinion were the other way, I would not follow that authority; but if the authorities are numerous, I admit that I must be bound. On that point the case of *In re Newman's Settled Estates* [(1874), L. R. 9 Ch. 681; 43 L. J. Ch. 702] is an authority."—*In re Bethlem Hospital* (1875), L. R. 19 Eq. 457, at pp. 459, 460; 44 L. J. Ch. 406, at p. 407, Jessel, M. R.

"What is the meaning of a first and true inventor? To ascertain its meaning, you must have recourse, no doubt, to various decisions given on the statute (21 Jac. I. c. 3), which is very nearly three hundred years old. It is not for a judge of the present day to give his meaning as to what should be attributed to the words of the statute. He must take the construction put on the statute to be of the same effect, as guiding him to a correct decision, as if that construction had been enacted as part of the statute."—*Plimpton v. Malcolmson* (1876), 3 Ch. D. 531, at p. 555; 45 L. J. Ch. 505, at pp. 506, 507, Jessel, M. R. (Cited by Stirling, J., in *In re Avery's Patent* (1887), 36 Ch. D. 307, at p. 317; 56 L. J. Ch. 586, at p. 591.)

"If an Act of Parliament uses the same language which was used in a former Act of Parliament referring to the same subject, and passed with the same purpose, and for the same object, the safe and well-known rule of construction is to assume that the legislature, when using well-known words upon which there have been well-known decisions, uses those words in the sense which the decisions have attached to them."—*Greaves v. Toftfield* (1880), 14 Ch. D. 563, at p. 571; 50 L. J. Ch. 118, at p. 119, James, L. J.

"I have no occasion to do more than repeat the observations I have very often made, that it leads to great mischief, when an Act of Parliament is plain and clear, for judges to refer to decisions on

older Acts, and then say they cannot distinguish sufficiently the new Act from the old, and that, therefore, the decisions are binding. Of course, you may look at them with a view of seeing what the interpretation is, but I prefer to read the modern Act, find out what its meaning is, and if it is plain, to act according to its plain construction, without troubling myself with the decisions of the Courts on earlier Acts, the provisions of which are not the same."—*Hack v. London Provident Building Society* (1883), 23 Ch. D. 103, at p. 112; 52 L. J. Ch. 541, at p. 542, Jessel, M. R. (See also *Ex parte Griffith* (1883), 23 Ch. D. 69; 52 L. J. Ch. 717.)

"The legislature have reproduced words upon which the case of *Maude v. Lowley* (No. 1) [(1874), L. R. 9 C. P. 165; 43 L. J. C. P. 103] was decided, and they must be taken to have known the interpretation that had been put upon them in that case."—*Clark v. Wallond* (1883), 52 L. J. Q. B. 320, at p. 322, Mathew, J.

"I think the proper course is to read the section of the Act [sect. 8 of Bills of Sale Act, 1878 (41 & 42 Vict. c. 31)], and to ascertain its meaning, and not to trouble ourselves about decisions upon the former Act. Any other course would be apt to lead us astray. If the later Act can clearly have only one meaning we ought to give effect to it accordingly. If, instead of doing that, we compare it with the former Act, and say that it differs from it only to such and such an extent, and then consider the decisions upon the former Act, we might in that way go back to half-a-dozen older Acts, and after considering the decisions on them, we might at last arrive at a conclusion exactly contrary to the later Act."—*Ex parte Blaiberg* (1883), 23 Ch. D. 254, at p. 258; 52 L. J. Ch. 461, at p. 463, Jessel, M. R.

"When there are ambiguous expressions in an Act passed one or two centuries ago, it may be legitimate to refer to the construction put upon these expressions throughout a long course of years, by the unanimous consent of all parties interested, as evidencing what must presumably have been the intention of the legislature at that remote period. But I feel bound to construe a recent statute according to its own terms, when these are brought into controversy, and not according to the views which interested parties may have hitherto taken; and in determining the true import of such a statute, it appears to me to be quite immaterial to consider whether it was passed in 1858 or in 1883."—*Trustees of Clyde Navigation v. Laird* (1883), 8 App. Cas. 658, at p. 673, Lord Watson.

"Where cases have been decided on particular forms of words in Courts, and Acts of Parliament use those forms of words which have received judicial construction, in the absence of anything in the Acts showing that the legislature did not mean to use the words in the sense attributed to them by the Courts, the presumption is that Parliament did so use them."—*Barlow v. Teal* (1885), 15 Q. B. D. 403, at p. 405; 54 L. J. Q. B. 400, Lord Coleridge, C. J.

"We cannot use the interpretation of one statute in construing another not made with the same intent."—*The Queen v. Commissioners of Income Tax* (1888), 22 Q. B. D. 296, at p. 307; 58 L. J. Q. B. 196, at p. 199, Lord Esher, M. R.

"The legislature in 1842 must be taken to have used the words ['full costs'] with knowledge of the judicial interpretation which had been put on them, and to have intended to use them in the sense thus given to them."—*Avery v. Wood*, [1891] 3 Ch. 115, at p. 118; 61 L. J. Ch. 75, at p. 76, Fry, L. J.

"There is a well-known principle of construction sanctioned, if sanction were necessary, by the decision of the Court of Appeal in *Greaves v. Tofield* [(1880), 14 Ch. D. 563; 50 L. J. Ch. 118], that where the legislature uses in an Act a legal term which has received judicial interpretation, it must be assumed that the term is used in the sense in which it has been judicially interpreted."—*Jay v. Johnstone* (1892), [1893] 1 Q. B. 25, at p. 28; 62 L. J. Q. B. 128, at p. 130, Lord Coleridge, C. J.

Construction by reference to Practice.

"While it is true that we have no right to construe the Act itself [Revenue Act, 1869 (32 & 33 Vict. c. 14)] by the practice which has taken place under that Act, it is equally true that we are entitled to construe that Act, not only upon the actual words used, but with reference to the practice which had grown up and was existing at the time when that Act was passed."—*Yewens v. Noakes* (1880), 6 Q. B. D. 530, at p. 535; 50 L. J. Q. B. 132, at p. 135, Thesiger, L. J.

SECTION VII.

	PAGE
Judicial and other Notice of Statutes	175
Notice of Clauses to Private Persons... ..	176
General and Special Provisions	176
General Incorporating Clauses	177
Public and Private Statutes	178
Local and Personal Statutes	180
Lord Shaftesbury's Clauses	180
Intention unconnected with Purpose of Act	181
Statutes conferring Powers on Public Bodies or Companies	181
Convenience and Inconvenience	183
Rights accompanying Powers	184
Powers causing a Nuisance	184
<i>Ultra Vires</i>	185
Statutes in reference to Trade	185
Statutes interfering with Private Property, Rights and Interests	186
Statutes striking at Privileges	188
Statutes imposing charge on an Individual	189
Statutes in reference to Judicial Acts	189

Judicial and other Notice of Statutes.

“*Nota* reader, the rule of the law is, that of general statutes the judges ought to take notice, although they be not pleaded, otherwise of special or particular statutes; and for the better understanding of your books on this point, and which shall be said in judgment of law *statutum generale*, and which is *statutum speciale*, it is to be known that *generale dicitur a genere, et speciale a specie*; and there are *genus, species, et individua*.”—2 *Coke*, p. 472, Part IV. 76 a ((1597), *Holland's Case*).

“The history of the law, with regard to the proof of private Acts of Parliament, is this: originally, they were required to be proved by a copy examined with the Parliament Roll. To avoid this inconvenience, a clause was usually inserted, declaring a copy printed by the King's printer should be evidence. It was then objected, that in such cases, it was necessary to prove that the Act produced was, in fact, printed by the King's printer; and to meet this objection, the present form of clause was adopted [*yiz.*, that the Act should be deemed and taken to be a public Act, and should be taken notice of as such by all judges, &c., without being specially pleaded].”—*Woodward v. Cotton* (1834), 1 Cr. M. & R. 44, at pp. 47, 48, Lord Lyndhurst, C. B.

Lord Brougham's Act, 1850 (13 & 14 Vict. c. 21)—

Sect. 7. "Be it enacted that every Act made after the commencement of this Act shall be deemed and taken to be a public Act, and shall be judicially taken notice of as such, unless the contrary be expressly provided and declared by such Act." (Commenced and took effect on 18th November, 1850. Repealed by Interpretation Act, 1889 (52 & 53 Vict. c. 63), s. 41. Re-enacted by 52 & 53 Vict. c. 63, ss. 9 and 39.)

Interpretation Act, 1889 (52 & 53 Vict. c. 63)—

Sect. 9. "Every Act passed after the year 1850, whether before or after the commencement of this Act [1st January, 1890], shall be a public Act, and shall be judicially noticed as such, unless the contrary is expressly provided by the Act."

Sect. 39. "In this Act the expression 'Act' shall include a local and personal Act and a private Act."

Notice of Clauses to Private Persons.

"Further, I am of opinion (if it were needful) that where a company is created by Act of Parliament, with liabilities and duties imposed on them by that Act of Parliament, and privileges and rights granted to persons dealing with such company in respect of their duties created by that Act of Parliament, such persons must be taken to know the provisions of the statute relating to such dealings."—*Cahill v. The London and North Western Rail. Co.* (1861), 30 L. J. C. P. 289, at p. 294, Erle, C. J.

"Now I do not think it is at all necessary to go into the question whether the Act of Parliament in this case is binding on the plaintiff as a notice, though, if it were necessary to decide that question, my impression is the same as that of my lord."—*Ibid.*, Willes, J.

General and Special Provisions.

General provisions in the same Act or other Acts, are not to control or repeal the special provisions. The special provisions are to be read as excepted out of the general.

"It may be laid down as a rule for the construction of statutes, that where a special provision and a general provision are inserted which cover the same subject-matter, a case falling within the words of the special provision must be governed thereby, and not by the terms of the general provision."—*Dryden v. Overseers of Putney* (1876), 1 Ex. D. 223, at p. 232, Quain, J.

"Where you have general provisions, whether contained in the same Act or in another Act of Parliament, and where you have special provisions as to a particular property in the ownership of one individual, you must read the special provisions as excepted out of the general. That is the only way of reconciling these Acts of Parliament. It is the practice of Parliament, as those who are in the habit of going before Parliamentary Committees know, to insert in the bill the special clauses which are agreed on, and then those persons who have obtained their insertion leave the committee-room, and have nothing further to do with the bill. The Committee would not listen to them on the general clauses. They would say, 'It is no business of yours; you have been provided for, and you have had all your clauses put in.' If you once admit the doctrine that the general provisions are to override the special ones, anybody getting a clause inserted in the Bill ought to be heard on every clause of that Act. It would be simply impossible to conduct private legislation at all if any such doctrine were admitted or prevailed. I consider it an established rule, that when you find general provisions of this sort, either in the same Act or other Acts, they are not to control or repeal the special provisions, which are considered to provide for the particular property."—*Taylor v. Corporation of Oldham* (1876), 4 Ch. D. 395, at p. 410, Jessel, M. R.

"It is to be borne in mind that where there are provisions in a special Act which are inconsistent with the provisions of a prior general Act, the provisions of the general Act must yield to those of the special Act. The case of *Att.-Gen. v. Great Eastern Rail. Co.* [(1872), L. R. 7 Ch. 475; (1873), L. R. 6 H. L. 367; 41 L. J. Ch. 505] is an authority for that, if authority was wanting."—*Yarmouth (Corporation of) v. Simmons* (1878), 10 Ch. D. 518, at p. 528; 47 L. J. Ch. 792, at p. 795, Fry, J.

General Incorporating Clauses.

In construing Acts enacting general provisions, and adjusting the general provisions in the general Act to the particular provisions of the special Act, considerations of reason and justice, and the universal analogy of such provisions in similar Acts of Parliament, are proper to be borne in mind, and ought to have much weight and force.

"I pause to observe that it is of the greatest importance, in any case like that with which your lordships have now to deal, to remember the principles of the scheme of legislation contained in

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those statutes [the Lands Clauses Consolidation Acts and the Railways Clauses Consolidation Acts]. They were passed because the legislature thought that a considerable number of general provisions, which had been ascertained, after sufficient experience, to be proper and necessary to be introduced into Acts authorizing undertakings of the character there referred to, had better be enacted once for all in a general form; so that when any particular undertaking afterwards came to be authorized, the special Act might be introduced in a short form, containing only such clauses as were suggested by the circumstances of the particular case. A general incorporating clause, of which your lordships have a specimen here, was to supersede the necessity of repeating in every such special Act those provisions which were universally or generally applicable.”—*Metropolitan District Rail. Co. v. Sharpe* (1880), 5 App. Cas. 425, at p. 430; 50 L. J. Q. B. 14, at p. 15, Lord Selborne, L. C.

“In construing Acts of Parliament of this kind, and adjusting the general provisions in the general Act to the particular provisions of the special Act, considerations of reason and justice, and the universal analogy of such provisions in similar Acts of Parliament, are proper to be borne in mind, and ought to have much weight and force.”—*Ibid.*, at p. 433; L. J. at pp. 16, 17. *Ibid.*

(As to weight and effect of decisions on the construction of such Acts, see *Pugh v. Golden Valley Rail. Co.* (1880), 15 Ch. D. 330, at p. 334; 49 L. J. Ch. 721, at p. 723, Thesiger, L. J., delivering the judgment of the Court, cited *ante*, pp. 11, 12.)

Public and Private Statutes.

When the construction is not clear, a private Act is construed more strictly than a public Act.

When the construction is clear, there is no difference between the modes of construing a private Act and a public Act.

“Where an Act of Parliament, in express terms, or by necessary implication, empowers an individual or individuals to take or interfere with the property or the rights of another, and upon a sound construction of the Act it appears to the Court that such was the intention of the legislature, in such cases it may well be the duty of the Court, whose province it is to declare and not to make the law, to give effect to the decrees of the legislature so expressed. But where an Act of Parliament merely enables an individual or individuals to deal with property of his or their own, for their own

benefit, and does not in terms, or by necessary implication, empower him or them to take or interfere with the property or rights of others, questions of a very different character arise. Here the distinction between public and private Acts of Parliament becomes material. By a private Act of Parliament, I do not mean merely private estate Acts, but local and personal as distinguished from general public Acts. Public Acts, it is said in the books, bind all the Queen's subjects. But of private Acts of Parliament, it is said that they do not bind strangers, unless by express words or necessary implication the intention of the legislature to affect the rights of strangers is apparent in the Act; and whether an Act is public or private does not depend upon any technical considerations (such as having a clause or declaration that the Act shall be deemed a public Act), but upon the nature and substance of the case. For those general propositions it is not necessary I should do more than refer to *Sir Francis Barrington's Case* [(1611), 4 Coke, p. 416, Part VIII., 138 a], and *Lucy v. Levington* [(1683), 1 Ventris, 175].”—*Dawson v. Paver* (1847), 5 Hare 415, at pp. 433, 434; 16 L. J. Ch. 274, at p. 279, Sir James Wigram, V.-C.

“Now it is quite true that there is some difference between a private Act of Parliament and a public one, but the only difference which I am aware of is as to the strictness of the construction to be given to it [the private Act] when there is any doubt as to the meaning. In the case of a public Act you construe it, keeping in view the fact that it must be taken to have been passed for the public advantage, and you apply certain fixed canons to its construction. In the case of a private Act which is obtained by persons for their own benefit, you construe more strictly provisions which they allege to be in their favour, because the persons who obtain a private Act ought to take care that it is so worded that that which they desire to obtain for themselves is plainly stated in it. But where the construction is perfectly clear, there is no difference between the modes of construing a private Act and a public Act, and, however difficult the construction of a private Act may be, when once the Court has arrived at the true construction, after having subjected it to the strictest criticism, the consequences are precisely the same as in the case of a public Act. The moment you have arrived at the meaning of the legislature, the effect is the same in the one case as in the other.”—*Altrincham Union Assessment Committee v. Cheshire Lines Committee* (1885), 15 Q. B. D. 597, at pp. 602, 603, Lord Esher, M. R.

Local and Personal Statutes.

Whether any particular Statute is commonly so called is to be determined by the Court and not by the jury.

“ On the 1st May, 1797, the House of Lords resolved that the King’s printer should class the general statutes and special, the public local, and private, in separate volumes; and on the 8th May, 1801, there was a resolution of the House of Commons, agreed to by the House of Lords, that the general statutes, and the ‘public local and personal,’ in each session, should be classed in separate volumes.”—*Richards v. Easto* (1846), 15 M. & W. 244, at p. 251; 15 L. J. Ex. 163, at p. 167, Parke, B., delivering the judgment of the Court.

“ At the time of its [32 Geo. III. c. lxxiv] being passed no Acts were commonly so called (viz., public local and personal, or local and personal), but statutes were only divided into public and private and general and special.

“ As the 5 & 6 Vict. c. 97 distinguishes between statutes *commonly called* public local and personal, or local and personal, and those which *are* of a local and personal nature; and it is to be determined by the Court and not by the jury whether any particular statute is commonly so called (which, in itself, would seem to be a mere matter of fact), there seems to be no better ground on which this is to be decided than a reference to the Statute Book itself; if we find it so printed under the directions of the legislature, we have the best grounds for saying it is commonly so called, and this appears the more proper with reference to the 5 & 6 Vict. c. 97, s. 5, which, as to this part, is clearly framed with reference to the resolutions, and to the division of statutes in the Statute Book thereby introduced.”—*Shepherd v. Sharp* (1856), 1 H. & N. 115, at p. 123; 25 L. J. Ex. 254, at p. 255, Coleridge, J., delivering the judgment of the Exchequer Chamber. (See also *The Queen v. London County Council*, [1893] 2 Q. B. 454; 63 L. J. Q. B. 4.)

Lord Shaftesbury’s Clauses.

“ My Lords, in local and personal Acts there was found to be great inconvenience from the clauses being framed according to the views of the promoters’ counsel, and, consequently, being very differently worded, and to remedy this a practice arose, I do not know when, but I believe about forty years ago, of obliging the promoters to submit their bills to the revision of the Chairman of Committees, who required them to make their clauses in the form he had approved of, unless some good reason was shown for

deviating from it. These forms of clauses were well known, and from the name of the noble lord who had originated them were called Lord *Shaftesbury's* Clauses."—*River Wear Commissioners v. Adamson* (1877), 2 App. Cas. 743, at p. 765; 47 L. J. Q. B. 193, at p. 203, Lord Blackburn.

Intention unconnected with purpose of Act.

"If in a local and personal Act we found words that seemed to express an intention to enact something quite unconnected with the purpose of the promoters, and which the Committee would not (if it did its duty) have allowed to be introduced into such an Act, I think the judges would be justified in putting almost any construction on the words that would prevent its having that effect."—*River Wear Commissioners v. Adamson* (1877), 2 App. Cas. 743, at p. 766; 47 L. J. Q. B. 193, at p. 204, Lord Blackburn.

Statutes conferring Powers.

Are to be strictly and literally carried into effect.

"We agree with my brother Alderson, who in *Lee v. Milner* [(1837), 2 Y. & C. Ex. 611, at p. 618] said, 'These Acts of Parliament have been called parliamentary bargains, made with each of the landowners. Perhaps more correctly they ought to be treated as conditional powers given by Parliament to take the lands of the different proprietors through whose estates the works are to proceed. Each landowner, therefore, has the right to have the powers strictly and literally carried into effect as regards his own land, and has the right also to require that no variation shall be made to his prejudice in the carrying into effect the bargain between the undertakers and anyone else.' 'This,' he adds, 'I conceive to be the real view taken of the law by Lord Eldon, in the case of *Blakemore v. The Glamorganshire Canal Co.* [(1824), 1 M. & K. 154; 2 L. J. Ch. 95].'"—*The York and North Midland Rail. Co. v. The Queen* (1853), 1 El. & B. 858, at p. 869; 22 L. J. Q. B. 225, at p. 232, Jervis, C. J., delivering the judgment of the Exchequer Chamber.

Generalia specialibus non derogant.

"Whenever the legislature has, by such an Act, vested powers of a special character in a corporate body, or any body of commissioners, for the express purpose of carrying out a particular object which the legislature has in view, no subsequent statute, in merely general terms, giving powers which, by their generality, apply to the

special powers conferred by the former Act, will override the special powers so delegated to the particular body of commissioners or corporation. That principle is clearly laid down in the cases referred to by Lord Justice Turner in his judgment in *The Trustees of the Birkenhead Docks v. Laird* [(1853), 18 Jur. 883, at p. 884; 4 D. M. & G. 732; 23 L. J. Ch. 457], and it seems to be a very ancient and settled principle of law. 'That appears to be the rule as laid down by the learned Judge Jenkyns in *Sir Foulke Grevil's Case* (reported in his work called *Eight Centuries of Reports, the Third Century*, case 41, p. 120), where, speaking of the statute 14 Edw. III., which ordains that every merchant who ships goods to be exported over sea shall be compelled to find sureties to import two marks in bullion upon his return; and then referring to the Acts of Parliament 45 Edw. III. and 10 Ric. II., which ordain that after three years no new charge shall be imposed upon the subject, the author says: "These last general statutes did not repeal the said statute 14 Edw. III., for it is a special statute," and further on he adds, "*generalia specialibus non derogant*." And he then proceeds to illustrate his position by reference to a statute which was passed to require that a certain tenant in tail shall only make leases for lives, followed by a general public Act, enabling tenants in tail to make leases for their lives, and says that this latter "does not repeal the said Act for the reason aforesaid." To this rule of law I entirely assent. . . . The reason of the rule is manifest, namely: The legislature, in passing a special Act, has entirely in its consideration some special power which is to be delegated to the body applying for the Act of Parliament on public grounds, and the preamble of every statute contains a recital of its being for the public convenience that the particular powers should be granted. When a general Act is subsequently passed, it seems to be a necessary inference that the legislature does not intend thereby to regulate all cases not specially brought before it; but looking to the general advantage of the community, without reference to any particular cases, it gives large and general powers which in their generality might, except for this very wholesome rule of interpreting statutes, override the powers which, upon consideration of the particular case, the legislature had before conferred by the special Act for the benefit of the public."—*The London and Blackwall Rail. Co. v. The Board of Works for the Limehouse District* (1856), 3 K. & J. 123, at p. 127; 26 L. J. Ch. 164, at p. 166, *Sir W. Page Wood, V.-C.*, followed *City and South London Rail. Co. v.*

London County Council, [1891] 2 Q. B. 513; 60 L. J. M. C. 149.
(See also *post*, p. 214.)

Powers conferred on a company by statute cannot be exercised for a collateral purpose.

“The case of the appellant, Mr. Galloway, rested on a principle well recognized, and founded on the soundest principles of justice. The principle is this, that when persons embarking in great undertakings, for the accomplishment of which those engaged in them have received authority from the legislature to take compulsorily the lands of others, making to the latter proper compensation, the persons so authorized cannot be allowed to exercise the powers conferred on them for any collateral object; that is, for any purposes except those for which the legislature has invested them with extraordinary powers. The necessity for strictly enforcing this principle became apparent, when it became an ordinary occurrence that associations should be formed of large numbers of persons possessing enormous pecuniary resources, and to whom are given powers of interfering for certain purposes with the rights of private property. In such a state of things it was very important that means should be devised whereby the Courts, consistently with the ordinary principles on which they act, should be able to keep such associations or companies strictly within their powers, and should prevent them, when the legislature has given them power to interfere with private property for one purpose, from using that power for another. Lord Cottenham, in numerous instances, interfered in such cases; and the principle has been cordially approved of, and acted on, in all the courts of law and equity, and has been frequently recognized and confirmed in this House. It has become a well-settled head of equity, that any company authorized by the legislature to take compulsorily the land of another for a definite object, will, if attempting to take it for any other object, be restrained by the injunction of the Court of Chancery from so doing.”—*Galloway v. Mayor and Commonalty of London* (1866), L. R. 1 H. L. 34, at p. 43; 35 L. J. Ch. 477, at pp. 483, 484, Lord Cranworth, L. C.

Convenience and Inconvenience.

Public advantage and convenience of inhabitants.

“The Act [The Gas Company’s] has, therefore, two purposes, the public advantage and the convenience of the inhabitants, and an Act of Parliament passed for these purposes ought not to receive

narrow construction.”—*Dover Gas Light Co. v. Dover (Mayor, &c.)* (1855), 7 D. M. & G. 545, at p. 555, Turner, L. J.

In a doubtful question of construction the balance of inconvenience is to be regarded as between the public and private persons.

“This and all other railways made under Acts of Parliament are made, not only, perhaps I may say not principally, for the benefit of the shareholders, but for the public benefit as furnishing lines of traffic which, from the time when the railway is made, the public have a right to use. You must, therefore, consider that in any provisions such as those now to be construed in such Acts the public interest and the private interest are impartially and justly regarded upon the one side and upon the other; and if upon words or expressions at all ambiguous it would seem that the balance of hardship or inconvenience would be strongly against the public on the one construction, or strongly against the private person on another construction, it is, I think, consistent with all sound principles to pay regard to that balance of inconvenience in determining such a doubtful question of construction.”—*Dixon v. Caledonian and Glasgow and South Western Rail. Cos.* (1880), 5 App. Cas. 820, at p. 827, Lord Selborne, L. C.

Rights accompanying Powers.

“The general rule on this head of law is, that where the legislature gives power to a public body to do anything of a public character, the legislature means also to give to the public body all rights, without which the power would become wholly unavailable, although such a meaning cannot be implied in relation to circumstances arising accidentally only.”—*In re Corporation of Dudley* (1881), 8 Q. B. D. 86, at p. 93; 51 L. J. Q. B. 121, at p. 124, Brett, L. J.

Powers causing a Nuisance.

“And my notion of the law is, that when statutory powers are conferred, under circumstances in which they may be exercised with a result not causing any nuisance, and new and unforeseen circumstances arise which render the exercise of them impossible without causing one, and so contravening the law of the land, the persons exercising them are liable to an indictment.”—*The Queen v. The Company of Proprietors of the Bradford Navigation* (1865), 6 B. & S. 631, at p. 648; 34 L. J. Q. B. 191, at p. 199, Cockburn, C. J.

Ultra Vires.

In statutes creating corporations, powers not expressly or impliedly authorized are prohibited.

“That case [*The Ashbury Railway Carriage and Iron Co. v. Riche* (1875), L. R. 7 H. L. 653] appears to me to decide, at all events, this, that where there is an Act of Parliament creating a corporation for a particular purpose, and giving it powers for that particular purpose, what it does not expressly or impliedly authorize is to be taken to be prohibited; and consequently, that the Great Eastern Company, created by Act of Parliament for the purpose of working a line of railway, is prohibited from doing anything that would not be within that purpose.”—*Att.-Gen. v. Great Eastern Rail. Co.* (1880), 5 App. Cas. 473, at p. 481, Lord Blackburn.

Effect of conferring powers which could have been exercised without any express statutory authority.

“The legislature has expressly conferred upon the company many powers which the company, as the owner of property, could have exercised without any express statutory authority. Whenever this is the case, the powers expressly given must be treated either as superfluous or as purposely inserted in order to define; that is, limit, the right conferred, and as implying a prohibition against the exercise of the more extensive rights which the company might have by virtue of its ownership of property. That the latter is the true mode of regarding statutory powers conferred on bodies created for public purposes and authorized to acquire land for such purposes cannot, I think, admit of any doubt.”—*London Association of Shipowners and Brokers v. London and India Docks Joint Committee*, [1892] 3 Ch. 242, at p. 251; 62 L. J. Ch. 294, at p. 300, Lindley, L. J.

Statutes in reference to Trade.

Statutes relating to trade in general are public, and those relating to certain trades are private.

“So mystery or trade is a general word, trade of grocery is special, and this grocer by name is *individuum*: and, therefore, Acts of Parliament concerning mysteries, or trades, are general Acts; but an Act of Parliament concerning the trade of grocery is a special Act, as it is said 28 H. VIII.; Dyer; 27; because the trade of grocers contains under it but *individua*, or singular persons;

as this or that grocer by name [*vide* 10 E. 4, 7 a].”—2 *Coke*, p. 473, Part IV. 76 b ((1597), *Holland's Case*).

“And though it be true that Acts of Parliament relating to trade in general are public Acts, yet a statute which relates only to a certain trade is a private one.”—*Kirk v. Nowill* (1786), 1 T. R. 118, at p. 125, Buller, J.

Statutes in reference to a large trade or business should receive a reasonable and business interpretation with regard to the trade or business with which it is dealing.

“My view of an Act of Parliament which is made applicable to a large trade or business is, that it should be construed, if possible, not according to the strictest and nicest interpretation of language, but according to a reasonable and business interpretation of it with regard to the trade or business with which it is dealing. It seems to me impossible reasonably to hold that those who have to regulate a large trade or business should be supposed to have made an enactment which would prevent that trade or business from being carried on, unless you are forced to come to such a conclusion by the language, and then that could only be by the most extraordinary inadvertence of those who legislate.”—*The Dunelm* (1884), 9 P. D. 164, at p. 171; 53 L. J. P. 81, at pp. 84, 85, Brett, M. R.

Statutes referring to a particular trade, business, or transaction.

“If the Act is directed to dealing with matters affecting everybody generally, the words used have the meaning attached to them in the common and ordinary use of language. If the Act is one passed with reference to a particular trade, business, or transaction, and words are used which everybody conversant with that trade, business, or transaction knows and understands to have a particular meaning in it, then the words are to be construed as having that particular meaning, though it may differ from the common or ordinary meaning of the words.”—*Unwin v. Hanson*, [1891] 2 Q. B. 115, at p. 119; 60 L. J. Q. B. 531, at p. 532, Lord Esher, M. R.

Statutes interfering with Private Property, Rights and Interests.

Statutes interfering with private property, rights or interests must be construed strictly.

“This [an Act for making a road] is a special authority delegated by Act of Parliament to particular persons to take away a

man's property and estate against his will; therefore it must be *strictly* pursued."—*Rex v. Croke* (1774), 1 Cowp. 26, at p. 29, Lord Mansfield, C. J.

"Those who seek to impose a burden upon the public should take care that their claim rests upon plain and unambiguous language."—*The Leeds and Liverpool Canal Co. v. Hustler* (1823), 1 B. & C. 424, at p. 425, Bayley, J.

"If the words of the statute on which they rely [an Act for better supplying with water the inhabitants of the parish of Stratford-le-Bow] be ambiguous, every presumption is to be made against the company and in favour of private property. If such a construction were not adopted, Acts would be framed ambiguously in order to lull parties into security."—*Scales v. Pickering* (1828), 4 Bing. 448, at p. 452, Best, C. J.

"It is a wise rule in the construction of private Acts of Parliament that they should be construed strictly."—*Ibid.*, at p. 453, Park, J.

"This was clearly a bargain made between a company of adventurers and the public, and, as in many similar cases, the terms of the bargain are contained in the Act, and the plaintiffs can claim nothing which is not clearly given."—*The Kingston-upon-Hull Dock Co. v. La Marche* (1828), 8 B. & C. 42, at p. 52, Lord Tenterden, C. J.

"The canal having been made under the provisions of an Act of Parliament, the rights of the plaintiffs are derived entirely from that Act. This, like many other cases, is a bargain between a company of adventurers and the public, the terms of which are expressed in the statute, and the rule of construction in all such cases is now fully established to be this,—that any ambiguity in the terms of the contract must operate against the adventurers, and in favour of the public; and the plaintiffs can claim nothing which is not *clearly* given to them by the Act. This rule is laid down in distinct terms by the Court in the case of *The Hull Dock Co. v. La Marche* [(1828), 8 B. & C. 42, at p. 52], where some previous authorities are cited: and it was also acted upon in the case of *The Leeds and Liverpool Canal Company v. Hustler* [(1823), 1 B. & C. 424]."—*Stourbridge Canal Co. v. Wheeley* (1831), 2 B. & Ad. 792, at pp. 793, 794, Lord Tenterden, C. J.

"This is an Act which interferes with private rights and private interests, and which ought, therefore, according to all the decisions upon the subject, to receive a strict construction so far as those

rights and interests are concerned. This is so clearly the doctrine of the Court that it is unnecessary to refer to the cases upon the point; they might be cited almost without end.”—*Hughes v. The Chester and Holyhead Rail. Co.* (1861), 31 L. J. Ch. 97, at p. 109, Turner, L. J.

“It is obvious that the rights thus conferred on the miner are, as regards the landowner, of a very onerous character, and such as practically to deprive the latter of any beneficial use of so much of his land as is thus used by the miner. Such rights to be thus exercised *in alieno solo* must, in my opinion, be construed strictly, and must be carried no further than the language of the Act declaring the custom expressly warrants.”—*Wake v. Redfearn* (1880), 43 L. T. 123, at p. 126, Cockburn, C. J. (See Declaratory Statutes, *post*, p. 196.)

Local and personal Acts, directly imposing mutual obligations upon two persons or companies, are to be construed analogously to contracts.

“In cases where the provisions of a local and personal Act directly impose mutual obligations upon two persons or companies, such provisions may, in my opinion, be fairly considered as having this analogy to contract, that they must, as between those parties, be construed in precisely the same way as if they had been matter not of enactment, but of private agreement. It was in that sense that in *Countess of Rothes v. Kircaldy Waterworks Commissioners* [(1882), 7 App. Cas. 694, at p. 707], I ventured to observe that ‘such statutory provisions as those of section 43 [as to compensation and damages] occurring in a local and personal Act must be regarded as a contract between the parties, whether made by their mutual agreement or forced upon them by the legislature.’ For all purposes of construction, I thought that the provisions which the House had to interpret might be legitimately viewed in that light. But it did not occur to me then, nor am I now of opinion, that the analogy of contract—for it is nothing more—could, in an English case especially, be carried further.”—*Davis & Sons v. Taff Vale Rail. Co.*, [1895] A. C. 542, at p. 552; 64 L. J. Q. B. 488, at p. 492, Lord Watson.

Statutes striking at Privileges.

“It seems to me that a more sound and reasonable interpretation of such an Act of Parliament [Bankruptcy Act, 1861 (24 & 25 Vict.

o. 134)] would be, that the privilege which had been established by common law, and recognised on many occasions by Act of Parliament, should be held to be a continuous privilege not abrogated or struck at unless by express words in the statute."—*Duke of Newcastle v. Morris* (1870), L. R. 4 H. L. 661, at p. 668, Lord Hatherley, L. C.

"It is clear that the burthen lies on those who seek to establish that the legislature intended to take away the private rights of individuals, to show that by express words, or by necessary implication, such an intention appears."—*Metropolitan Asylum District v. Hill* (1881), 6 App. Cas. 193, at p. 208; 50 L. J. Q. B. 353, at p. 362, Lord Blackburn.

Statutes imposing Charge on an Individual.

"I desire to say that where an Act of this description is obtained by a company, incorporated for purposes of profit, to confer upon them rights and powers which they would not have at common law, the provisions of such a statute must be somewhat jealously scrutinized, and I think that they ought not to be held to possess any right unless it be given in plain terms or arises as a necessary inference from the language used."—*Scottish Drainage and Improvement Co. v. Campbell* (1889), 14 App. Cas. 139, at p. 142, Lord Herschell.

"I have always understood, with reference to private Acts, as contradistinguished from public Acts of Parliament, that if a charge is imposed upon the person of an individual, it must be so imposed in clear and express terms, and not left to implication."—*Ibid.*, at p. 149, Lord Fitzgerald.

Statutes in reference to Judicial Acts.

"When a statute confers an authority to do a judicial act in a certain case, it is imperative on those so authorized to exercise the authority when the case arises and its exercise is duly applied for by a party interested and having the right to make the application."—*Macdougall v. Paterson* (1851), 11 C. B. 755, at p. 773; 21 L. J. C. P. 27, at p. 29, Jervis, C. J., delivering the judgment of the Court (Jervis, C. J., Maule, J., Williams, J., and Talfourd, J.).

Construction of statutory rules, and provision as to exercise of powers and duties.

Interpretation Act, 1889 (52 & 53 Vict. c. 63).

Sect. 31. "Where any Act, whether passed before or after the commencement of this Act [1st January, 1890], confers power to make, grant, or issue any instrument, that is to say, any Order in Council, order, warrant, scheme, letters patent, rules, regulations, or byelaws, expressions used in the instrument, if it is made after the commencement of this Act [1st January, 1890], shall, unless the contrary intention appears, have the same respective meanings as in the Act conferring the power."

Sect. 32.—"(1.) Where an Act passed after the commencement of this Act [1st January, 1890] confers a power or imposes a duty, then, unless the contrary intention appears, the power may be exercised and the duty shall be performed from time to time as occasion requires.

"(2.) Where an Act passed after the commencement of this Act [1st January, 1890] confers a power or imposes a duty on the holder of an office, as such, then, unless the contrary intention appears, the power may be exercised and the duty shall be performed by the holder for the time being of the office.

"(3.) Where an Act passed after the commencement of this Act [1st January, 1890] confers a power to make any rules, regulations, or byelaws, the power shall, unless the contrary intention appears, be construed as including a power, exerciseable in the like manner and subject to the like consent and conditions, if any, to rescind, revoke, amend, or vary the rules, regulations, or byelaws."

Ministerial Acts and Judicial Discretion.

"Now, it appears to me that it is a true proposition to say that, when a public duty is imposed by Act of Parliament upon a body of persons, which duty consists in the exercise of a discretion, it cannot be said that the exercise of that discretion is a merely ministerial act. If what the defendants did cannot be considered to have been merely ministerial, then, I think, for the purposes of the question, whether they are protected from an action, it must be considered as judicial."—*Partridge v. General Council of Medical Education and Registration of the United Kingdom* (1890), 25 Q. B. D. 90, at p. 96; 59 L. J. Q. B. 475, at p. 478, Lord Esher, M. R.

SECTION VIII.

	PAGE
Retrospective and Prospective Statutes	191
Declaratory Statutes	196
Statutory Fictions	196
Contradictory Statutes	196
Inconsistent Statutes	197
Remedial Statutes	197
New Right and its Remedy	198
New Offence and its Remedy	199
Prohibitory Statutes	199
Explanatory Statutes	200
Mandatory Statutes	200
Fiscal, Taxing and Charging Statutes	201
Penal Statutes	203
Mode of enforcing Statutes	205
Cumulative Statutes—	
Accumulative Penalties	206
Accumulative Damages	206
Same Offence with different Punishments	207
Avoiding Statutes	208

Retrospective and Prospective Statutes.

Statutes are not to be construed so as to have a retrospective effect, unless they contain express words to that effect.

A larger retrospective effect should not be given to a statute which is to some extent intended to be retrospective than that which it can plainly be seen the legislature meant.

The consequences of holding an Act not to be retrospective are to be looked at.

“The general principle, however, that a statute is not to be construed so as to have retrospective operation, is a just one; for persons ought not to have their rights affected by laws passed subsequently.”—*Thompson v. Lack* (1846), 3 C. B. 540, at p. 551; 16 L. J. C. P. 75, at pp. 77, 78, Wilde, C. J.

“The general rule on this subject is stated by Lord Coke, in the Second Institute, 292, in his Commentary on the Statute of Gloucester. ‘*Nova constitutio futuris formam imponere debet, non præteritis*,’ and the principle is one of such obvious convenience and justice, that it must always be adhered to in the construction of statutes, unless in cases where there is something on the face of the enactment putting it beyond doubt that the legislature meant

it to operate retrospectively.”—*Moon v. Durden* (1848), 2 Ex. 22, at p. 33, Rolfe, B.

“But it is, as Lord Coke says, ‘a rule and law of Parliament that regularly, *nova constitutio futuris formam imponere debet, non præteritis*.’ This rule, which is, in effect, that enactments in a statute are generally to be construed to be prospective, and intended to regulate the future conduct of persons, is deeply founded in good sense and strict justice, and has been acted upon in many cases. . . . But this rule, which is one of construction only, will certainly yield to the intention of the legislature; and the question in this and in every other similar case is, whether that intention has been sufficiently expressed.”—*Ibid.*, at p. 42, Parke, B.

“We must, however, enter upon the consideration of it [the Bankruptcy Law Consolidation Act, 1849 (12 & 13 Vict. c. 106)] with a due regard to the well-known principle that statutes are not to be held to operate retrospectively unless they contain express words to that effect. Sometimes, no doubt, the legislature find it expedient to give a retrospective operation to an Act to a considerable extent; but then care ought to be taken to express that intention in clear and unambiguous language.”—*Marsh v. Higgins* (1850), 9 C. B. 551, at p. 567; 19 L. J. C. P. 297, at p. 300, Wilde, C. J.

“I take it to be a clear rule of law that the language of a statute is *primâ facie* to be construed as prospective only. This is according to the legal maxim, *Nova constitutio futuris formam imponere debet, non præteritis*.”—*Vansittart v. Taylor* (1855), 4 E. & B. 910, at p. 914; 24 L. J. Q. B. 198, at p. 199, Parke, B.

“Nothing but clear and express words will give a retrospective effect to a statute. It would be a most dangerous construction to give a retrospective effect to a statute by implication.”—*Young v. Hughes* (1859), 28 L. J. Ex. 161, at p. 164; 4 H. & N. 76, Pollock, C. B.

“I think it is a broad principle of construction that, unless the Court sees a clear indication of intention in an Act of Parliament to legislate *ex post facto*, and to give to the Act the effect of depriving a man of a right which belonged to him at the time of passing the Act, the Court will not give to the Act a retrospective operation. The case of *Moon v. Durden* [(1848), 2 Ex. 22], which was cited, strongly illustrates that principle.”—*Evans v. Williams* (1865), 2 Dr. & Sm. 324, at p. 329, Sir R. T. Kindersley, V.-C.

"Except there be a clear indication either from the subject-matter or from the wording of a statute, the statute is not to have a retrospective construction. That rule was laid down strongly in *Moon v. Durden* [(1848), 2 Ex. 22, at p. 33]. . . . In fact, we must look to the general scope and purview of the statute, and at the remedy sought to be applied, and consider what was the former state of the law, and what it was that the legislature contemplated."—*Pardo v. Bingham* (1869), L. R. 4 Ch. 735, at pp. 739, 740, Lord Hatherley, L. C. (Cited in *In re Chapman*, [1896] 1 Ch. 323, at pp. 327, 328, by Kekewich, J.)

"It is a general rule that, where a statute is passed altering the law, unless the language is expressly to the contrary, it is taken as intended to apply to a state of facts coming into existence after the Act."—*The Queen v. Ipswich Union* (1877), 2 Q. B. D. 269, at p. 270; 46 L. J. M. C. 207, at p. 208, Cockburn, C. J.

"The question whether an Act of Parliament is retrospective in its operation must be determined by the provisions of the Act itself, bearing in mind that a statute is not to be construed retrospectively, unless it is clear that such was the intention of the legislature."—*Quiller v. Mapleson* (1882), 9 Q. B. D. 672, at p. 674; 52 L. J. Q. B. 44, at p. 45, Jessel, M. R.

"It is a well-known principle of law on the construction of Acts of Parliament, and especially when the rights and liabilities of persons are altered thereby, that they are not to have a retrospective operation unless it is expressly so stated."—*Hickson v. Darlow* (1883), 23 Ch. D. 690, at p. 692; 52 L. J. Ch. 453, at p. 454, Fry, J.

"*Primâ facie* sect. 3 [of Ground Game Act, 1880 (43 & 44 Vict. c. 47)] would be prospective only, that being the general rule of construction of Acts of Parliament, that you are not to interfere with rights unless you find express words, and the operation of that third section would be prospective only."—*Allhusen v. Brooking* (1884), 26 Ch. D. 559, at p. 564; 53 L. J. Ch. 520, at p. 521, Chitty, J.

"Now the particular rule of construction which has been referred to, but which is valuable only when the words of an Act of Parliament are not plain, is embodied in the well-known trite maxim, *omnis nova constitutio futuris formam imponere debet non præteritis*, that is, that except in special cases the new law ought to be construed so as to interfere as little as possible with vested rights. It seems to me that, even in construing an Act which is to a certain extent retrospective, and in construing a section which is to a

certain extent retrospective, we ought nevertheless to bear in mind that maxim as applicable whenever we reach the line at which the words of the section cease to be plain. That is a necessary and logical corollary of the general proposition that you ought not to give a larger retrospective power to a section, even in an Act which is to some extent intended to be retrospective, than you can plainly see the legislature meant."—*Reid v. Reid* (1886), 31 Ch. D. 402, at pp. 408, 409; 55 L. J. Ch. 294, at p. 298, Bowen, L. J.

"In determining whether any provision of an Act was intended to be retrospective or not, I think the consequences of holding that it is not retrospective must be looked at, and to my mind it is inconceivable that the legislature, when, in a new Act which repeals a former Act, they repeat in so many words certain provisions of the repealed Act, should have intended that persons who, before the passing of the new Act, had broken the provisions of the old Act—who had been doing that which the legislature thought to be wrong—should entirely escape the consequences of their wrongdoing by reason of the repeal of the old Act."—*Ex parte Todd* (1887), 19 Q. B. D. 186, at p. 195; 56 L. J. Q. B. 431, at p. 432, Lord Esher, M. R.

"I think that, when a statute renders necessary to the validity of a transaction a condition with which it is impossible that the parties to the transaction should comply at the time when the statute comes into operation, the statute cannot apply to antecedent transactions, unless the legislature have plainly expressed their intention that it is to apply to them. It would be most unjust that transactions should be avoided when the parties to them have had no opportunity of complying with the requirements of the legislature."—*Ibid.*, at p. 198; L. J. at p. 433, Fry, L. J.

"Unless the intention of the legislature is clearly expressed to that effect, criminal offences are not to be created by giving a retro-active operation to Acts of Parliament."—*The Queen v. Griffiths*, [1891] 2 Q. B. 145, at p. 148; 60 L. J. M. C. 93, Denman, J.

"It certainly requires very clear and unmistakeable language in a subsequent Act of Parliament to revive or recreate an expired right. It is a fundamental rule of English law that no statute shall be construed so as to have a retrospective operation unless its language is such as plainly to require such a construction; and the same rule involves another and subordinate rule to the effect that a statute is not to be construed so as to have a greater retro-

spective operation than its language renders necessary.”—*Lauri v. Renad*, [1892] 3 Ch. 402, at p. 420; 61 L. J. Ch. 580, at p. 583, Lindley, L. J.

Alteration of Law pending an Action.

“We are of opinion in general that the law as it existed when the action was commenced must decide the rights of the parties in the suit, unless the legislature express a clear intention to vary the relation of litigant parties to each other.”—*Hitchcock v. Way* (1837), 6 A. & E. 943, at pp. 951, 952, Lord Denman, C. J., delivering the judgment of the Court.

A statute dealing with procedure only, unless the contrary is expressed, applies to all actions, whether commenced before or after the passing of the statute.

“When an Act of Parliament alters the proceedings which are to prevail in the administration of justice, and there is no provision that it shall not apply to suits then pending, I think it does apply to such actions.”—*Wright v. Hale* (1860), 6 H. & N. 227, at p. 231; 30 L. J. Ex. 40, at p. 42, Pollock, C. B.

“But where the enactment deals with procedure only, unless the contrary is expressed, the enactment applies to all actions whether commenced before or after the passing of the Act. That this is the principle appears from the cases that have been referred to on both sides.”—*Ibid.*, at p. 232; L. J. at p. 43, Wilde, B.

“The canon of decision in *Wright v. Hale* [(1860), 6 H. & N. 227; 30 L. J. Ex. 40] is, that when the effect of an enactment is to take away a right, *prima facie* it does not apply to existing rights.”—*Kimbray v. Draper* (1868), L. R. 3 Q. B. 160, at pp. 162, 163; 37 L. J. Q. B. 80, at p. 81, Blackburn, J.

“The rule laid down by Wilde, B., in *Wright v. Hale* [(1860), 6 H. & N. 227, at p. 232; 30 L. J. Ex. 40, at p. 43] applies, that ‘Where the enactment deals with procedure only, unless the contrary is expressed, the enactment applies to all actions, whether commenced before or after the passing of the Act.’”—*Singer v. Hasson* (1884), 50 L. T. 326, at p. 327, A. L. Smith, J.

“It certainly was considered in many cases that where a person had commenced an action he had a vested right, and that any subsequent statute ought not to be construed as retro-active so as to alter that right. That is not an invariable rule, and it does not apply if the language of the statute is clear and express. This appears from a good many authorities, especially those affecting

questions of costs, some of which are—*Freeman v. Moyes* [(1834), 1 Ad. & E. 338], *Wright v. Hale* [(1860), 6 H. & N. 227; 30 L. J. Ex. 40], *Kimbray v. Draper* [(1868), L. R. 3 Q. B. 160; 37 L. J. Q. B. 80].”—*Att.-Gen. v. Theobald* (1890), 24 Q. B. D. 557, at p. 560, Pollock, B.

Declaratory Statutes.

“The case of *Attorney-General v. Hertford* [(1849), 3 Ex. 670; 18 L. J. Ex. 332] in the Court of Exchequer, is a strong authority that, if an Act is in its nature a declaratory Act, the argument that it must not be construed so as to take away previous rights is not applicable.”—*Att.-Gen. v. Theobald* (1890), 24 Q. B. D. 557, at pp. 559, 560, Pollock, B.

“A declaratory act means to declare the law, or to declare that which has always been the law, and there having been doubts which have arisen, Parliament declares what the law is, and enacts that it shall continue what it then is.”—*Jones v. Bennett* (1890), 63 L. T. 705, at p. 708, Lord Coleridge, C. J.

Statutory Fictions.

“When a statute enacts that something shall be deemed to have been done, which in fact and truth was not done, the Court is entitled and bound to ascertain for what purposes and between what persons the statutory fiction is resorted to.”—*Ex parte Walton* (1881), 17 Ch. D. 746, at p. 756; 50 L. J. Ch. 657, at p. 662, James, L. J.

Contradictory Statutes.

“Our decision is conformable with the doctrine laid down in *The Attorney-General v. The Chelsea Waterworks Co.* [(1731), Fitzgibbon, 195]: there it was resolved that where the proviso of an Act of Parliament is directly repugnant to the purview of it, the proviso shall stand and be held a repeal of the purview, *as it speaks the last intention of the makers.*”—*The King v. The Justices of Middlesex* (1831), 2 B. & Ad. 818, at p. 821, Lord Tenterden, C. J., delivering the judgment of the Court.

“It is a cardinal principle in the interpretation of a statute that if there are two inconsistent enactments, it must be seen if one cannot be read as a qualification of the other.”—*Ebbs v. Boulnois* (1875), L. R. 10 Ch. 479, at p. 484; 44 L. J. Ch. 691, at p. 694, James, L. J.

“In the first place, it was said that if construed according to

their ordinary grammatical construction, they [the words of a section] would practically contradict other sections in a series of Acts of Parliament which apply to burial boards and districts. If it had been found that reading them in their ordinary sense they would contradict some other enactments, but that reading them in a sense in which, though not their ordinary sense, they were reasonably capable of being read, they would not contradict such other enactments, then I agree that they should be read so that all the enactments should be read together without contradicting each other.”—*The Queen v. Overseers of Tonbridge* (1884), 13 Q. B. D. 339, at p. 342; 53 L. J. Q. B. 488, at p. 491, Brett, M. R.

Inconsistent Statutes.

“If two inconsistent Acts be passed at different times, the last is to be obeyed, and if obedience cannot be observed without derogating from the first, it is the first which must give way. Every Act of Parliament must be considered with reference to the state of the law subsisting when it came into operation, and when it is to be applied; it cannot otherwise be rationally construed. Every Act is made either for the purpose of making a change in the law, or for the purpose of better declaring the law, and its operation is not to be impeded by the mere fact that it is inconsistent with some previous enactment.”—*The Dean, &c., of Ely v. Bliss* (1842), 5 Beav. 574, at p. 582; 11 L. J. Ch. 351, at p. 354, Lord Langdale, M. R.

Remedial Statutes.

Remedial statutes ought to be construed liberally.

“The law will never make an interpretation to advance a private and to destroy the public, but always to advance the public and to prevent every private, which is odious in law in such cases. And, therefore, it is well said in *Heydon's Case* in the Third Part of my Reports, f. 7 b. The office of judges is always to make such construction as to suppress the mischief and advance the remedy; and to suppress subtle inventions and evasions for the continuance of the mischief, *et pro privato commodo*, and to add force and life to the cure and remedy according to the true intention of the makers of the Act *pro bono publico*.”—6 Coke, p. 139, Part XI., 73 b.

“In remedial cases, the construction of statutes is extended to

other cases within the reason or the rule of them. But where it is a hard positive law, and the reason is not very plainly to be seen, it ought not to be extended by construction."—*Atcheson v. Everitt* (1776), Cowp. 382, at p. 391, Lord Mansfield, C. J.

"But it had been properly said that this was a remedial statute (9 Will. III. c. 8, s. 8), and in advancement of the remedy all was to be done in a way consistent with any construction of it."—*Johnes v. Johnes* (1814), 3 Dow App. Cas. 1, at p. 15, Lord Eldon, L. C.

"It is by no means unusual in construing a statute to extend the enacting words beyond their natural import and effect, in order to include cases within the same mischief, where the statute is remedial. It is a mode of construction as familiar to every legal person, as expounding the statute by equity."—*Dean and Chapter of York v. Middleburgh* (1828), 2 Y. & J. 196, at p. 215, Alexander, C. B.

"I admit that the common distinction between penal and remedial Acts, viz., that the one is to be construed strictly, the other liberally, ought not to be erased from the mind of a judge, yet, whatever be the Act, be it penal, and certainly if remedial, we ought always to look for its true construction. In that respect, there ought to be no distinction between a penal and a remedial statute. If the remedial statute does not extend to the particular matter under consideration, we have no power to legislate so as to extend it."—*Nicholson v. Fields* (1862), 7 H. & N. 810, at p. 817; 31 L. J. Ex. 233, at p. 235, Pollock, C. B.

"The statute being remedial of a grievance, by amplifying the jurisdiction of the English Court of Admiralty, ought, according to the general rule applicable to such statutes, to be construed liberally, so as to afford the utmost relief which the fair meaning of its language will allow. And the decisions upon it have hitherto proceeded upon this principle of interpretation."—*Giovanni Daputo v. James Wyllie & Co.* (1874), L. R. 5 P. C. 482, at p. 492; 43 L. J. Ad. 20, at pp. 23, 24, Sir Montague E. Smith, delivering the judgment of the Judicial Committee.

New Right and its Remedy.

"It is a settled rule that if a statute creates a new right and gives a particular remedy for enforcing it, there is no other remedy."—*West v. Downman* (1880), 14 Ch. D. 111, at p. 120; Jessel, M. R.

New Offence and its Remedy.

"It was argued that where a new offence and a penalty for it had been created by statute, a person proceeding under the statute was confined to the recovery of the penalty, and that nothing else could be asked for. That is true as a general rule of law, but there are two exceptions. The first of the exceptions is the ancillary remedy in equity by injunction to protect a right. That is a mode of preventing that being done which, if done, would be an offence. Wherever an act is illegal and is threatened, the Court will interfere and prevent the act being done—and as regards the mode of granting an injunction, the Court will grant it either when the illegal act is threatened but has not been actually done, or when it has been done and seemingly is intended to be repeated.

"The second exception is that created by the Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 25, sub-s. (8), which enables the Court to grant an injunction in all cases in which it shall appear to the Court to be just or convenient. This section may be said to be a general supplement to all Acts of Parliament."—*Cooper v. Whittingham* (1880), 15 Ch. D. 501, at pp. 506, 507; 49 L. J. Ch. 752, at p. 755, Jessel, M. R.

"The ground is said to be that where a statute creates an offence and defines particular remedies against the person committing that offence, *prima facie* the party injured can avail himself of the remedies so defined and no other. I see no reason to call that rule in question. But it must be examined with reference to the terms in which the statute deals with the subject."—*Brain v. Thomas* (1881), 50 L. J. Q. B. 662, at p. 663, Lord Selborne, L. C.

"Everything that the statute [The Public Worship Regulation Act, 1874 (37 & 38 Vict. c. 85)] requires must be done; but when it refers generally to powers to enforce obedience, and does not prescribe any procedure, those powers generally referred to would be the powers of the Court in which the proceedings are deemed to be taken."—*Green v. Lord Penzance* (1881), 6 App. Cas. 657, at p. 675; 51 L. J. Q. B. 25, at p. 43, Lord Selborne, L. C.

Prohibitory Statutes.

"Prohibitory statutes prevent you from doing something which formerly it was lawful for you to do. And whenever you can find

that anything done that is substantially that which is prohibited, I think it is perfectly open to the Court to say that that is void, not because it comes within the spirit of the statute, or tends to effect the object which the statute meant to prohibit, but because, by reason of the true construction of the statute, it is the thing, or one of the things, actually prohibited.”—*Philpott v. St. George's Hospital* (1857), 6 H. L. Cas. 338, at p. 349; 27 L. J. Ch. 70, at p. 72, Lord Chelmsford, L. C.

“The argument for the appellants is, that the covenantor here has tried indirectly to do by a circuitous mode that which he could not do directly, because the statute prohibited it, and that the principle laid down in the two cases of *Doe d. Mitchinson v. Carter* [(1798), 8 T. R. 57, 300] is applicable to the present case. That principle was approved of in *Croft v. Lumley* [(1858), 6 H. L. Cas. 672; 27 L. J. Q. B. 321], though there was a difference of opinion as to its application in that case. The principle, as I understand it, is that whenever it can be shown that the acts of the parties are adopted for the purpose of effecting a thing which is prohibited, and the thing prohibited is in consequence effected, the parties have done that which they may have purposely caused, though they may have done it indirectly and endeavoured to conceal that they have done so. This, I think, is a sound principle, but it is essential for its application, that what is thus effected should be the thing prohibited.”—*Jeffries v. Alexander* (1860), 8 H. L. Cas. 594, at p. 623; 31 L. J. Ch. 9, at p. 14, Blackburn, J.

Explanatory Statutes.

“An Act of explanation which always is beneficially to be interpreted.”—2 *Coke*, p. 196, Part III. 75 a.

Mandatory Statutes.

“No universal rule can be laid down for the construction of statutes, as to whether mandatory enactments shall be considered directory only or obligatory, with an implied nullification for disobedience. It is the duty of the Courts of Justice to try to get at the real intention of the legislature by carefully attending to the whole scope of the statute to be construed.”—*The Liverpool Borough*

Bank v. Turner (1860), 2 D. F. & J. 502, at pp. 507, 508; 30 L. J. Ch. 379, at pp. 380, 381, Lord Campbell, L. C.

Fiscal, Taxing and Charging Statutes.

A tax shall not be considered to be imposed without a plain declaration of the intent of the legislature to impose it shown by clear and unambiguous words, however apparently within the spirit of the law the case might otherwise appear to be.

This rule does not apply to any considerable extent where the payment is to be made in return for services rendered.

"It is a sound general rule, that a tax shall not be considered to be imposed (or at least not for the benefit of a subject) without a plain declaration of the intent of the legislature to impose it."—*Hull Dock Co. v. Browne* (1831), 2 B. & Ad. 43, at pp. 58, 59, Lord Tenterden, C. J.

"We must look to the precise words of these Revenue Acts, because in some degree they operate as penalties."—*Doe d. Scruton v. Snaith* (1832), 8 Bing. 146, at p. 152, Park, J.

"It must be observed that, *in dubio*, you are always to lean against the construction which imposes a burthen on the subject: the intention of the legislature to impose a tax must be clear: it was so held in the case of *The Hull Dock Co. v. Browne* [(1831), 2 B. & Ad. 43, at p. 58]. 'These rates,' said Lord Tenterden, 'are a tax upon the subject; and it is a sound general rule that a tax shall not be considered to be imposed (or at least not for the benefit of a subject) without a plain declaration of the intent of the legislature to impose it.' The like law was laid down by the Court of King's Bench in the case of a company claiming against the public—*Gildart v. Gladstone* [(1809), 11 East 675, at p. 685]—where Lord Ellenborough said, 'If the words would fairly admit of different meanings, it would be right to adopt that which would be most favourable to the interest of the public and most against that of the company, because the company in bargaining with the public, ought to take care to express distinctly what payments they were to receive, and because the public ought not to be charged unless it be clear that it was so intended.'"—*The Stockton and Darlington Rail. Co. v. Barrett* (1844), 7 M. & G. 870, at p. 879, Lord Brougham.

"It is a well-established rule, that the subject is not to be taxed

without clear words for that purpose, and also that every Act of Parliament must be read according to the natural construction of its words.”—*In re Micklethwait* (1855), 11 Ex. 452, at p. 456; 25 L. J. Ex. 19, at p. 21, Parke, B.

“I am desirous to say, that I disclaim in this case acting on the maxim that a burthen shall not be imposed on the public unless by clear and unambiguous language. In *In re Micklethwait* [(1855), 11 Ex. 452, at p. 456; 25 L. J. Ex. 19, at p. 21], Baron Parke says [rule above set out]. The latter is the main rule; the other subordinate. Construe the statute correctly if its meaning can be ascertained. Maxims of the sort referred to, as frequently applied, are mere invitations to erroneous construction, though, when properly understood, they are quite correct.”—*Foley v. Fleetwood* (1858), 3 H. & N. 769, at pp. 780, 781; 28 L. J. Ex. 100, at p. 106, Bramwell, B.

“As I understand the principle of all fiscal legislation, it is this: If the person sought to be taxed comes within the letter of the law he must be taxed, however great the hardship may appear to the judicial mind to be. On the other hand, if the Crown, seeking to recover the tax, cannot bring the subject within the letter of the law, the subject is free, however apparently within the spirit of the law the case might otherwise appear to be. In other words, if there be admissible, in any statute, what is called an equitable construction, certainly such a construction is not admissible in a taxing statute, where you simply adhere to the words of the statute.”—*Partington v. Att.-Gen.* (1869), L. R. 4 H. L. 100, at p. 122; 38 L. J. Ex. 205, at p. 217, Lord Cairns.

“My lords, the cases which have decided that Taxing Acts are to be construed with strictness, and that no payment is to be exacted from the subject which is not clearly and unequivocally required by Act of Parliament to be made, probably meant little more than this, that inasmuch as there was not any *a priori* liability in a subject to pay any particular tax, nor any antecedent relationship between the tax-payer and the taxing authority, no reasoning founded upon any supposed relationship of the tax-payer and the taxing authority could be brought to bear upon the construction of the Act, and therefore the tax-payer had a right to stand upon a literal construction of the words used, whatever might be the consequence. I cannot think that this principle applies to any considerable extent, when the payment spoken of in the Act of Parliament is a payment to be made in return for

services rendered, and, above all, in a case where Parliament does not step in to give the right of payment, but rather to moderate and limit a right to payment which otherwise might exist without limit, or at all events with only such limits as would be placed upon it by a *quantum meruit* assessment.”—*Pryce v. Monmouthshire Canal and Railway Cos.* (1879), 4 App. Cas. 197, at pp. 202, 203; 49 L. J. Ex. 130, at p. 134, Earl Cairns, L. C.

“Their lordships, therefore, having regard to the rule that the intention to impose a charge on the subject must be shewn by clear and unambiguous language, &c.”—*Oriental Bank Corporation v. Wright* (1880), 5 App. Cas. 842, at p. 856; 50 L. J. P. C. 1, Lord Blackburn, delivering the judgment of the Judicial Committee.

“A taxing Act is to be construed upon the same principle and by the same rules as any other Act.”—*Mersey Docks and Harbour Board v. Lucas* (1881), 51 L. J. Q. B. 114, at p. 118, Brett, L. J.

“The general canon of construction is stated in *Reg. v. Barclay* [(1881), 8 Q. B. D. 306, at p. 312; 51 L. J. M. C. 27], by Field, J., who says, ‘It is a very well established rule for the construction of statutes that, if they impose a charge on the subject, they must be strictly construed as against the party in whose favour the charge is imposed.’”—*Davies v. Evans* (1882), 9 Q. B. D. 238, at p. 242; 51 L. J. M. C. 132, at p. 136, Grove, J.

“The second rule is that, where the words occur in a statute imposing taxation throughout the three kingdoms, they should be construed so as to make the incidence of the taxation alike in all three kingdoms. This was considered in *Lord Saltoun v. Lord Advocate* [(1860), 3 Macq. 659].”—*The Queen v. Commissioners of Income Tax* (1888), 22 Q. B. D. 296, at p. 310; 58 L. J. Q. B. 196, at p. 201, Fry, L. J.

“Acts of Parliament which impose legacy duty, like all other taxing Acts, are to be read strictly; that is to say, they are not to be extended so as to have the effect of imposing on the subject a tax which Parliament has not clearly made him pay. Those principles are perfectly familiar.”—*In re J. Thorley*, [1891] 2 Ch. 613, at p. 623; 60 L. J. Ch. 537, at p. 538, Lindley, L. J.

Penal Statutes.

Penal statutes should be construed strictly.

“It is not true that the Court, in the exposition of penal statutes, are to narrow the construction. We are to look to the words in

the first instance, and, where they are plain, we are to decide on them. If they are doubtful, we are then to have recourse to the subject-matter; but at all events, it is only a secondary rule."—*The King v. Hodnett* (1786), 1 T. R. 96, at p. 101, Buller, J.

"The rule to which I allude requires that all penal laws should be construed strictly, that no case should be holden to be reached by them but such as are within both the spirit and letter of such laws. If these rules are violated, the fate of accused persons is decided by the arbitrary discretion of judges, and not by the express authority of the laws. . . . Lord Chief Baron Comyn says, 'A penal statute shall not be extended by equity, and the general words of a penal statute shall be restrained for the benefit of him against whom the penalty is inflicted.'"—*Fletcher v. Lord Sondes* (1826), 3 Bing. 501, at pp. 580, 581, Best, C. J.

"I admit that the common distinction between penal and remedial Acts, viz., that the one is to be construed strictly, the other liberally, ought not to be erased from the mind of a judge, yet, whatever be the Act, be it penal, and certainly if remedial, we ought always to look for its true construction. In that respect, there ought to be no distinction between a penal and a remedial statute. If the remedial statute does not extend to the particular matter under consideration, we have no power to legislate so far to extend it. Undoubtedly we are thus far bound to a strict construction in a penal statute that, if there be a fair and reasonable doubt, we must act as in revenue cases, where the rule is, that the subject is not to be taxed without clear words for that purpose."—*Nicholson v. Fields* (1862), 7 H. & N. 810, at p. 817; 31 L. J. Ex. 233, at p. 235, Pollock, C. B.

"Their Lordships . . . hold, that when a statute inflicts a penalty for not doing an act, the penalty implies that there is a legal compulsion to do the act in question; and that this principle is not affected by the fact that a penalty has a particular destination."—*Redpath v. Allan* (1872), L. R. 4 P. C. 511, at p. 517; 42 L. J. Ad. 8, at p. 10, Sir R. Phillimore, delivering the judgment of the Judicial Committee.

"We are, however, called upon to construe the penal enactment, and if the words are equally applicable to penal as to civil consequences, the appellant must show a preponderance to the penal."—*Dickinson v. Fletcher* (1873), 29 L. T. N. S. 540, at p. 542, Brett, J.

"In construing an Act like the present [The Licensing Act, 1872 (35 & 36 Vict. c. 94)], by which a penalty is imposed, we must look strictly at the language in order to see whether the person against whom the penalty is sought to be enforced has committed an offence within the section."—*Graff v. Evans* (1882), 8 Q. B. D. 373, at p. 377; 51 L. J. M. C. 25, Field, J.

"But then comes the question whether the plaintiffs are also entitled to recover penalties under section 6 [The Fine Arts Copyright Act, 1862 (25 & 26 Vict. c. 68)]. We must be very careful in construing that section, because it imposes a penalty. If there is a reasonable interpretation which will avoid the penalty in any particular case, we must adopt that construction. If there are two reasonable constructions, we must give the more lenient one. That is the settled rule for the construction of penal sections."—*Tuck & Sons v. Priester* (1887), 19 Q. B. D. 629, at p. 638; 56 L. J. Q. B. 553, Lord Esher, M. R.

"The well-settled rule that the Court will not hold that a penalty has been incurred unless the language of the clause which is said to impose it is so clear that the case must necessarily be within it."—*Ibid.*, at p. 645, Lindley, L. J.

"It is a sound rule of construction that where any penalty or disability is imposed by statute on any of her Majesty's subjects, the Court, before which any charge is preferred, must be able to see clearly what the conduct is which will render a person liable to the penalty so imposed."—*Crane v. Lawrence* (1890), 25 Q. B. D. 152, at p. 154; 59 L. J. M. C. 110, at p. 111, Cave, J.

Mode of enforcing Statutes.

"Where an act creates an obligation, and enforces the performance in a special manner, we take it to be a general rule that performance cannot be enforced in any other manner. If an obligation is created, but no mode of enforcing its performance is ordained, the common law may, in general, find a mode suited to the particular nature of the case."—*Doe d. The Bishop of Rochester v. Bridges* (1831), 1 B. & Ad. 847, at p. 859, Lord Tenterden, C. J.

"An action will not lie for the infringement of a right created by statute where another specific remedy for infringement is provided by the same statute."—*Stevens v. Jeacocke* (1847), 17 L. J. Q. B. 163, at p. 165, Lord Denman, C. J.

"I agree with what was said by Lord Tenterden in *Doe v. Bridges* [(1831), 1 B. & Ad. 847, at p. 859, see *supra*]. He appears to me to have stated that as being a general rule, not as one which is absolutely rigid and may not admit of special exceptions; and notwithstanding criticism that has been applied to what he said, I think it is a good working rule for getting at the meaning of the legislature in the cases to which it applies."—*Lamplugh v. Norton* (1889), 22 Q. B. D. 452, at p. 456; 58 L. J. Q. B. 279, at p. 281, Lord Esher, M. R.

Cumulative Statutes.

Accumulative Penalties.

"The rule touching the repeal of laws is *leges posteriores priores contrarias abrogant*; but subsequent Acts of Parliament in the affirmative giving new penalties and instituting new methods of proceeding, do not repeal former methods and penalties of proceeding ordained by preceding Acts of Parliament without negative words . . . both stand together."—*Middleton v. Crofts* (1736), 2 Atk. 650, at p. 675, Lord Hardwicke, L. C.

"Now it is a general rule that subsequent statutes which add accumulative penalties do not repeal former statutes [6 Mod. 140; 11 Rep. 63 b.]."—*Rex v. Jackson* (1775), Cowp. 297, at p. 298, Lord Mansfield, C. J.

"I have looked into the case of (1736) *Middleton v. Croft* as it is reported in Cas. temp. Hardw. 326; it was a case of prohibition, argued by eminent civilians, and involved an elaborate discussion upon the authority of the canons. Lord Hardwicke there says, 'Subsequent Acts of Parliament in the affirmative only, although giving new penalties, are never taken to be a repeal of former Acts, unless there be negative words or a plain contrariety between the two Acts, so as there is a plain indication in the latter of an intention to repeal the former.'"—*Dakins v. Seaman* (1842), 9 M. & W. 777, at pp. 788, 789, Lord Abinger, C. B.

Accumulative Damages.

"It has been held in many instances that where a statute gives accumulative damages to the party grieved, it is not a penal action, for in penal actions no costs are allowed, but if the action be

brought by the party grieved he is entitled to costs.”—*Woodgate v. Knatchbull* (1787), 2 T. R. 148, at p. 154, Ashhurst, J.

Same Offence with different Punishments.

Where the same offence is re-enacted with a different punishment the prior enactment is repealed.

“ If a crime be created by statute, with a given penalty, and be afterwards repeated in another statute with a lesser penalty attached to it, I cannot say that the party ought to be held liable to both. There may, no doubt, be two remedies for the same act, but they must be of a different nature. The new Act, then, would be in effect a repeal of the former penalty.”—*Henderson v. Sherborne* (1837), 2 M. & W. 236, at p. 239, Lord Abinger, C. B.

“ My judgment (in *Henderson v. Sherborne*, *supra*), was founded on the principle, that where the same offence is re-enacted with a different punishment, it repeals the former law.”—*Att.-Gen. v. Lockwood* (1842), 9 M. & W. 378, at p. 391, Lord Abinger, C. B. (And see *Robinson v. Emerson* (1866), 4 H. & C. 352, at p. 355, Martin, B.)

“ Lord Campbell [in *Michell v. Brown* (1858), 1 Ell. & Ell. 267, at p. 274; 28 L. J. M. C. 53, at p. 55], delivering the judgment of the Court, said, ‘ If a later statute again describes an offence created by a former statute, and affixes a different punishment to it, varying the procedure, &c., we think that the prosecutor must proceed for the offence under the later statute. If the later statute expressly altered the quality of the offence, as by making it a misdemeanour instead of a felony, or a felony instead of a misdemeanour, the offence could not be proceeded for under the earlier statute; and the same consequence seems to follow from altering the procedure and the punishment. The later enactment operates by way of substitution and not cumulatively, giving an option to the prosecutor or the magistrate.’ That, in principle, is very much in point with the present case.”—*Whithead v. Smithers* (1877), 2 C. P. D. 553, at p. 557; 46 L. J. M. C. 234, at p. 236, Lord Coleridge, C. J.

(See also *Fortescue v. Vestry of St. Matthew, Bethnal Green*, [1891] 2 Q. B. 170, at p. 178; 60 L. J. M. C. 172, at pp. 177, 178, where Charles, J., cited the above quotation.)

Interpretation Act, 1889 [52 & 53 Vict. c. 63].

Sect. 33. “ Where an act or omission constitutes an offence

under two or more Acts, or both under an Act and at common law, whether any such Act was passed before or after the commencement of this Act [1st January, 1890], the offender shall, unless the contrary intention appears, be liable to be prosecuted and punished under either or any of those Acts or at common law, but shall not be liable to be punished twice for the same offence."

Avoiding Statutes.

"In our judgment clauses in statutes avoiding transactions or instruments are to be interpreted with reference to the purpose for which they are inserted, and when open to question are to receive a wide or a limited construction according as the one or the other will best effectuate the purpose of the statute (per Turner, L. J., in *Jortin v. South Eastern Rail. Co.* [(1855), 6 D. M. & G. 270, at p. 275; 24 L. J. Ch. 343, at pp. 348, 349])."—*In re Burdett* (1888), 20 Q. B. D. 310, at p. 314; 57 L. J. Q. B. 263, at p. 264, Fry, L. J., reading the judgment of the Court of Appeal (Lord Esher, M. R., and Fry and Lopes, L. JJ.).

SECTION IX.

	PAGE
Expiring and Continuing Statutes	208
Repeal of Statutes in same Session	209
Effect of Repeal... ..	210
Prior Special and Subsequent General Statute	214
Prior General and Subsequent Special Statute	219
Repeal by Implication	220
Repeal saved by Incorporation	221
Repeal of Modifying Sections	221
Repeal by Private Statute	222
Repeal and Re-enactment	223

Expiring and Continuing Statutes.

"When an Act is continued, everybody is estopped to say it is not in force."—*Rex v. Morgan* (1737), 2 Stra. 1066, Lord Hardwicke, C. J.

"The 1 James I. c. 22 having expired before the 21 James I., and has been only re-enacted since that time; but on this point I have not entertained a doubt from the beginning. We are all most clearly of opinion that this must be considered as an action on the 1 James I. c. 22; and that the subsequent laws, which have continued it from time to time, all give effect to it as an Act made in the reign of the 1 James I."—*Shipman v. Henbest* (1790), 4 T. R. 109, at p. 114, Lord Kenyon, C. J.

"It is by no means a consequence of an Act of Parliament's expiring, that rights acquired under it should likewise expire. Take the case of a penalty imposed by an Act of Parliament; would not a person who had been guilty of the offence upon which the legislature had imposed the penalty while the Act was in force, be liable to pay it after its expiration?"—*Steavenson v. Oliver* (1841), 8 M. & W. 234, at p. 240; 10 L. J. Ex. 338, at pp. 340, 341, Lord Abinger, C. B.

"Then comes the question, whether the privilege of practising (as apothecaries) given by the statute 6 Geo. IV., referred to in the replication, is one which continues notwithstanding the expiration of that statute. That depends on the construction of the temporary statute. There is a difference between temporary statutes and statutes which are repealed; the latter (except so far as they relate to transactions already completed under them) become as if they had never existed; but with respect to the former, the extent of the restrictions imposed, and the duration of the provisions, are matters of construction."—*Ibid.*, at p. 241; L. J. at p. 341, Parke, B.

Repeal of Statutes in same Session.

"Our decision is conformable with the doctrine laid down in *The Attorney-General v. The Chelsea Waterworks Co.* [(1731), Fitzgibbon 195]; there it was resolved, that where the proviso of an Act of Parliament is directly repugnant to the purview of it, the proviso shall stand, and be held a repeal of the purview, as it speaks the last intention of the makers. At the time when that resolution was come to, if two Acts of Parliament, passed in the same session, were repugnant, it was not possible to know which of them received the royal assent first, for there was then no indorsement on the roll of the day on which Bills received the royal assent, and all

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Acts passed in the same session were considered as having received the royal assent on the same day, and were referred to the first day of the session. Now, however, it is known on what day each Bill receives the royal assent, it being provided by the (1792-3) 33 Geo. III. c. 13, that a certain parliamentary officer [the clerk of the Parliaments] shall indorse [in English] on every Act of Parliament [which shall pass after the 8th day of April, 1793, immediately after the title of such Act] 'the day, month, and year when the same shall have passed and shall have received the royal assent; and such indorsement shall be taken to be a part of such Act, and to be the date of its commencement when no other commencement shall be therein provided.' It appears that, in this case, the metropolitan Act received the royal assent a few days after the local Act, and consequently we are of opinion that, so far as the two Acts are contradictory to each other, the metropolitan Act, which last received the royal assent, must have the effect of repealing the other."—*The King v. The Justices of Middlesex* (1831), 2 B. & Ad. 818, at p. 821, Lord Tenterden, C. J., delivering the judgment of the Court.

Lord Brougham's Act, 1850 (13 & 14 Vict. c. 21).

Sect. 1. "Every Act to be passed after the commencement of this Act [18th November, 1850] may be altered, amended, or repealed in the same session of Parliament, any law or usage to the contrary notwithstanding." (Repealed, Interpretation Act, 1889 (52 & 53 Vict. c. 63), s. 41.)

Interpretation Act, 1889 (52 & 53 Vict. c. 63) (which came into operation on the 1st January, 1890).

Sect. 10. "Any Act may be altered, amended, or repealed in the same session of Parliament."

Sect. 39. "In this Act the expression 'Act' shall include a local and personal Act, and a private Act."

Effect of Repeal.

No Repeal by Recital only.

"The bare recital in a statute is not sufficient to repeal the positive provisions of a former statute without a clause of repeal." —*Dore v. Gray* (1788), 2 T. R. 358, at p. 365, Ashhurst, J.

Lord Brougham's Act, 1850 (13 & 14 Vict. c. 21).

Sect 3. "Where it is only intended to amend or repeal any portion only of such section, it shall be necessary still either to recite such portion or to set forth the matter or thing intended to be amended or repealed." (Commenced and took effect on 18th November, 1850. Repealed, Interpretation Act, 1889 (52 & 53 Vict. c. 63), s. 41.)

No Revival by Repeal of Repealing Statute.

"When an Act of repeal is repealed, the first Act repealed is revived, &c., as appears in *Spencer's Case*, 15 Edw. III., title *Petition*, 2."—6 *Coke*, p. 199, Part XII. 7.

Lord Brougham's Act, 1850 (13 & 14 Vict. c. 21).

Sect. 5. "Where any Act repealing in whole or in part any former Act is itself repealed, such last repeal shall not revive the Act or provisions before repealed, unless words be added reviving such Act or provisions." (Commenced and took effect from 18th November, 1850. Repealed, Interpretation Act, 1889 (52 & 53 Vict. c. 63), s. 41.)

Interpretation Act, 1889 (52 & 53 Vict. c. 63).

Sect. 11 (1). "Where an Act [including a local and personal and a private Act] passed after the year 1850, whether before or after the commencement of this Act [1st January, 1890], repeals a repealing enactment, it shall not be construed as reviving any enactment previously repealed unless words are added reviving that enactment."

Repealed Provisions and Substituted Provisions.

Lord Brougham's Act, 1850 (13 & 14 Vict. c. 21).

Sect. 6. "Wherever any Act shall be made, repealing in whole or in part any former Act, and substituting some provision or provisions instead of the provision or provisions repealed, such provision or provisions shall remain in force until the substituted provision or provisions shall come into operation by force of the last made Act." (Commenced and took effect from 18th November, 1850. Repealed, Interpretation Act, 1889 (52 & 53 Vict. c. 63), s. 41.)

Interpretation Act, 1889 (52 & 53 Vict. c. 63).

Sect. 11 (2). "Where an Act passed after the year 1850, whether before or after the commencement of this Act [1st January, 1890],

repeals wholly or partially any former enactment and substitutes provisions for the enactment repealed, the repealed enactment shall remain in force until the substituted provisions come into operation."

A repealed statute is considered as if it had never existed, except as to transactions passed and closed.

"It has been long established that, when an Act of Parliament is repealed, it must be considered (except as to transactions past and closed) as if it had never existed. That is the general rule; and we must not destroy that by indulging in conjectures as to the intention of the legislature."—*Surtees v. Ellison* (1829), 9 B. & C. 750, at p. 752, Lord Tenterden, C. J.

"I take the effect of repealing a statute to be, to obliterate it as completely from the records of the Parliament as if it had never passed; and it must be considered as a law that never existed, except for the purpose of those actions which were commenced, prosecuted, and concluded whilst it was an existing law."—*Kay v. Goodwin* (1830), 6 Bing. 576, at pp. 582, 583, Tindal, C. J.

"There is a difference between temporary statutes and statutes which are repealed; the latter (except so far as they relate to transactions already completed under them) become as if they had never existed."—*Stevenson v. Oliver* (1841), 8 M. & W. 234, at p. 241; 10 L. J. Ex. 338, at p. 341, Parke, B.

"The general rule is, that a statute, from the time when it is repealed, can no longer be acted upon. The Court was governed by that rule in *The Queen v. Mawgan* [(1838), 8 A. & E. 496], which cannot be distinguished from this case, and no attempt was made there to assert the difference which is now suggested between form and substance. I think that the effect of a repeal is the same whether the alteration affect procedure only, or matter which is more of substance."—*The Queen v. The Inhabitants of Denton* (1852), 18 Q. B. 761, at p. 770; 21 L. J. M. C. 207, at p. 208, Lord Campbell, C. J.

"I apprehend that where an Act of Parliament, or part of an Act of Parliament, is repealed, it must, as was laid down by Lord Tenterden in *Surtees v. Ellison* [(1829), 9 B. & C. 750, at p. 752], be considered as if it had never existed, except as to transactions which are passed and closed."—*Ex parte Grisewood* (1859), 4 De G. & J. 544, at p. 557; 28 L. J. Ch. 769, at p. 776, Turner, L. J.

Huddleston, B., adopted this view of the effect of a repealing statute.—*Att.-Gen. v. Lamplough* (1878), 3 Ex. D. 214, at p. 217; 47 L. J. Ex. 555, at p. 557.

"I should say that where an Act of Parliament has been repealed, it is, as to all matters completed and ended at the time of its repeal, as though it had never existed as a governing law."—*Ibid.*, at p. 228; L. J. at p. 561, Bramwell, L. J.

Effect of Repeal in future Acts.

Interpretation Act, 1889 (52 & 53 Vict. c. 63).

Sect. 38 (2). "Where this Act or any Act passed after the commencement of this Act [1st January, 1890] repeals any other enactment, then, unless the contrary intention appears, the repeal shall not—

- "(a) revive anything not in force or existing at the time at which the repeal takes effect; or,
 - "(b) affect the previous operation of any enactment so repealed or anything duly done or suffered under any enactment so repealed; or,
 - "(c) affect any right, privilege, obligation, or liability acquired, accrued, or incurred under any enactment so repealed; or,
 - "(d) affect any penalty, forfeiture, or punishment incurred in respect of any offence committed against any enactment so repealed; or,
 - "(e) affect any investigation, legal proceeding, or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture, or punishment as aforesaid;
- and any such investigation, legal proceeding, or remedy may be instituted, continued, or enforced, and any such penalty, forfeiture, or punishment may be imposed, as if the repealing Act had not been passed."

Particular enactment not repealed by general enactment in the same statute.

"The rule is, that where a general intention is expressed, and the Act expresses also a particular intention incompatible with the general intention, the particular intention is to be considered in the nature of an exception."—*Churchill v. Crease* (1828), 5 Bing. 177, at p. 180, Best, C. J.

"The general rules which are applicable to particular and general enactments in statutes are very clear, the only difficulty is in their application. The rule is, that wherever there is a particular enactment and a general enactment in the same statute, and the latter, taken in its most comprehensive sense, would overrule the former, the particular statute must be operative, and the general enactment must be taken to affect only the other parts of the statute to which it may properly apply."—*Pretty v. Solby* (1859), 26 Beav. 606, at p. 610, Sir John Romilly, M. R.

Prior Special Statute and Subsequent General Statute.

A prior special statute is not repealed by a subsequent general statute, unless by express reference or necessary implication.

"The question of law would arise which was discussed before the Lords Justices in *The Trustees of the Birkenhead Dock Co. v. Laird* [(1853), 4 D. M. & G. 732; 23 L. J. Ch. 457], namely, whether a special Act of Parliament, creating special rights or imposing special duties, is to be considered as repealed by a subsequent general Act, which makes no reference to it. All the reasoning applicable to the cases there cited by Lord Justice Turner from Judge Jenkins's Reports applies quite as strongly to the case before me. . . . The reason in all those cases is clear. In passing the special Act the legislature had their attention directed to the special case which the Act was meant to meet, and considered and provided for all the circumstances of that special case, and, having so done, they are not to be considered, by a general enactment passed subsequently, and making no mention of any such intention, to have intended to derogate from that which, by their own special Act, they had thus carefully supervised and regulated."—*Fitzgerald v. Champneys* (1861), 2 J. & H. 31, at pp. 53, 54; 30 L. J. Ch. 777, at p. 782, Sir W. Page Wood, V.-C. (See also *ante*, pp. 181, 182.)

"But the insertion of a saving clause is never a safe ground for determining the construction of any Act of Parliament, whether local or general. We all know the anxiety there is on the part of everyone who imagines that his rights may be infringed by the passing of an Act, whether general or local, to procure the insertion of a saving clause to protect them, even where the ordinary rules of construction supersede the necessity of any such protection ;

and certainly the insertion of the saving clause, to which I was referred, cannot lead me to the conclusion that the general rule of construction, that a special Act is not repealed by a subsequent general enactment in which the special Act is not referred to, is inapplicable.”—*Fitzgerald v. Champneys* (1861), 2 J. & H. 31, at p. 59; 30 L. J. Ch. 777, at p. 783, Sir W. Page Wood, V.-C.

“The general principle to be applied to the construction of Acts of Parliament is, that a *general* Act is not to be construed to repeal a previous *particular* Act, unless there is some express reference to the previous legislation on the subject, or unless there is a necessary inconsistency in the two Acts standing together. . . . The rule with respect to general Acts of Parliament, and their effect upon previous particular statutes, is well laid down by the present Chancellor [Lord Hatherley] in the case referred to of *Fitzgerald v. Champneys* [(1861), 2 J. & H. 31; 30 L. J. Ch. 777]. The authorities on the subject are very numerous; and I will content myself with referring very shortly to one or two. In *Lyn v. Wyn* [(1662), O. Bridg. C. P. 127], a very important case with respect to ecclesiastical leases, it is said by Sir Orlando Bridgman, C. J., ‘The law will not allow the exposition to revoke or alter, by construction of *general words*, any *particular* statute, where the words may have their proper operation without it.’ . . . I would also refer to *Dr. Foster’s Case* [(1615), 6 Coke, p. 119, Part XI. 63a], where there is this passage, ‘only it must be known that, forasmuch as Acts of Parliament are established with such gravity, wisdom, and universal consent of the whole realm, for the advancement of the commonwealth, they ought not, by any constrained construction out of the general and ambiguous words of a subsequent Act, to be abrogated.’”—*Thorpe v. Adams* (1871), L. R. 6 C. P. 125, at pp. 135, 136; 40 L. J. M. C. 52, at p. 56, Bovill, C. J.

“It is a fundamental rule in the construction of statutes, that a subsequent statute in general terms is not to be construed to repeal a previous particular statute, unless such an intention appears by necessary implication. We had occasion to consider that matter in the recent case of *Thorpe v. Adams* [(1871), L. R. 6 C. P. 125; 40 L. J. M. C. 52].”—*The Queen v. Champneys* (1871), L. R. 6 C. P. 384, at p. 394; 40 L. J. C. P. 95, at p. 99, Bovill, C. J.

“The general rule is that subsequent and contrary statutes repeal earlier ones. That is a good rule, but it does not apply here. The true rule cannot be better expressed than it is in a judgment of Sir Montagu Smith in *Conservators of the Thames v. Hall* [(1868),

L. R. 3 C. P. 415, at p. 421], where he applies the rule to the special legislation in the Merchant Shipping Act, 1854, as affected by the Thames Conservancy Act, 1857. He says: 'The rule, as laid down by Sir Orlando Bridgman, is that "the law will not allow the exposition to revoke or alter by construction of general words any particular statute, where the words may have their proper operation without it."'"—*Dodds v. Shepherd* (1876), 1 Ex. D. 75, at p. 78; 45 L. J. Ex. 457, at p. 458, Bramwell, B.

"In Dwarries on Statutes, 2nd ed., pp. 530, 531, it is said, 'Every affirmative statute is a repeal of a precedent affirmative statute, where its matter necessarily implies a negative, but only so far as it is clearly and indisputably contradictory and contrary to the former Act in the very matter, and the repugnancy such that the two Acts cannot be reconciled.' Various instances illustrating the application of this rule are afterwards cited in the book which I have mentioned, and I may also refer to the reasoning in *Foster's Case* [6 Coke, p. 107, Part XI. 56 b]."—*Hill v. Hall* (1876), 1 Ex. D. 411, at pp. 413; 414; 45 L. J. M. C. 153, at p. 155, Cleasby, B.

"Affirmative Acts only repeal one another when a repugnancy clearly exists between them."—*Ibid.*, at p. 415; L. J., at p. 157, Field, J.

"But there is a well-known rule which says that, though a subsequent law abrogates a prior inconsistent law, that is not so where the prior law is not one of general application."—*Ex parte Attwater* (1876), 5 Ch. D. 27, at p. 32; 46 L. J. Bk. 41, at p. 42, Bramwell, J. A.

"I prefer taking the law as it is laid down by Lord Justice Turner in a well-known case which gave rise to a considerable amount of discussion,—that of *Hawkins v. Gathercole* [(1855), 6 D. M. & G. 1, at p. 21; 24 L. J. Ch. 332, at p. 338]. . . . Lord Justice Turner reviews the whole subject in his judgment: . . . he says that in construing Acts of Parliament, 'Regard must also be had to the intent and meaning of the legislature. The rule upon this subject is well expressed in the case of *Stradling v. Morgan* [(1560), Plowd. 199, at p. 204]; in which case it is said, "That the judges of the law in all times past have so far pursued the intent of the makers of statutes, that they have expounded Acts which were general in words to be but particular, where the intent was particular"; and after referring to several cases, the report contains the following remarkable passage :

"From which cases it appears that the sages of the law heretofore have construed statutes quite contrary to the letter in some appearance; and those statutes which comprehend all things in the letter, they have expounded to extend but to some things; and those which generally prohibit all people from doing such an act, they have interpreted to permit some people to do it; and those which include every person in the letter, they have adjudged to reach to some persons only; which expositions have always been founded upon the intent of the legislature, which they have collected, sometimes by considering the cause and necessity of making the Act, sometimes by comparing one part of the Act with another, and sometimes by foreign circumstances, so that they have ever been guided by the intent of the legislature, which they have always taken according to the necessity of the matter, and according to that which is consonant to reason and good discretion."

"My Lords, the doctrine is laid down there as fully as in the learned text-writer [Maxwell's Interpretation of Statutes], cited by Lord Justice Bramwell [*Garnett v. Bradley* (1877), 2 Ex.D.349, at p.351], and the grounds and reasons of it are very well explained and satisfactorily established. This will be found, I think, on looking into and analysing the various cases on the subject, which I do not enter into because it is unnecessary so to do, to be the governing idea and conception, and the conclusion which has been founded upon it by the Courts of Judicature. Where an Act of Parliament repeals a preceding Act which relates to a certain definite subject-matter distinctly laid down for the guidance of those who are to be operated upon by the Act of Parliament in that special matter, or to a particular class of persons who are to be either protected, or, it may be, affected adversely by a particular clause of the enactment, then the legislature is presumed to have had that very special subject-matter, and that very special class of persons, in contemplation when the subsequent statute was passed; and if there was a general Act subsequently passed, the generality of which was large enough, as far as words go, to comprehend the particular matter dealt with in the previous enactment, it will be considered whether or not, as regards the persons who are to be affected or protected by the Act, persons who are not in any way mentioned or specified by the subsequent general Act are to be injuriously affected by an adverse enactment, or deprived of a benefit they are entitled to under a previous enactment. And in that case the Court, in construing the subsequent general Act of Parliament,

would expect to find something or other pointing out that the attention of the legislature had been turned towards the former special enactment, and, in passing the general Act, that it had made the new enactment with the view of embracing every case (including that special case) embraced within the provisions of the previous Act."—*Garnett v. Bradley* (1878), 3 App. Cas. 944, at pp. 950, 951, 952, 953, Lord Hatherley. (Cited in *In re Williams* (1887), 36 Ch. D. 573, at p. 577; 57 L. J. Ch. 264, at p. 266, by North, J.)

"It is a well-settled doctrine that an express provision in an Act of Parliament like this of 18 & 19 Vict. c. 134 [the Despatch of Business, Court of Chancery, Act], is not repealed by general words in a subsequent statute [the Judicature Act, 1873] which does not refer to it unless the two statutes are necessarily inconsistent with one another: *Thorpe v. Adams* [(1871), L. R. 6 C. P. 125; 40 L. J. M. C. 52]; and *Hill v. Hall* [(1876), 1 Ex. D. 411; 45 L. J. M. C. 153]."—*Ex parte Mayor of London* (1883), 25 Ch. D. 384, at p. 391; 53 L. J. Ch. 6, at p. 9, Kay, J.

"It is now well settled, that a general enactment of a later Act cannot repeal a specific enactment in an earlier Act merely by implication." [His Lordship referred to *Thorpe v. Adams* (1871), L. R. 6 C. P. 125; 40 L. J. M. C. 52; and *Hill v. Hall* (1876), 1 Ex. D. 411; 45 L. J. M. C. 153.]—*Gard v. Commissioners of Sewers* (1883), 49 L. T. 325, at p. 327, Kay, J.

"Now, if anything be certain, it is this, that where there are general words in a later Act capable of reasonable and sensible application, without extending them to subjects specially dealt with by earlier legislation, you are not to hold that earlier and special legislation indirectly repealed, altered, or derogated from merely by force of such general words, without any indication of a particular intention to do so. For that principle I may refer to *Hawkins v. Gathercole* [(1855), 6 D. M. & G. 31; 24 L. J. Ch. 332]."—*Seward v. "Vera Cruz"* (1884), 10 App. Cas. 59, at p. 68; 54 L. J. P. 9, at p. 13, Earl of Selborne, L. C.

"Now, the rule, as I understand it, is this: that where there is an Act of Parliament which deals in a special way with a particular subject-matter, and that is followed by a general Act of Parliament which deals in a general way with the subject-matter of the previous legislation, the Court ought not to hold that general words in such a general Act of Parliament effect a repeal of the prior and special legislation, unless it can find some reference in the general

Act to the prior and special legislation, or unless effect cannot be given to the provisions of the general Act without holding that there was such a repeal. There are numerous authorities on the point, amongst which I may refer to *Dr. Foster's Case* [(1615), 6 Coke, p. 107, Part XI. 56 b]; *Lyn v. Wyn* [(1662), O. Bridg. C. P. 122, 127]; *Fitzgerald v. Champneys* [(1861), 30 L. J. Ch. 777; 2 J. & H. 31]. In the case last mentioned, Vice-Chancellor Sir W. Page Wood gave the reason for the rule. He said [p. 54]: 'The reason in all these cases is clear. In passing the special Act, the legislature had their attention directed to the special case which the Act was meant to meet, and considered and provided for all the circumstances of that special case; and having so done, they are not to be considered by a general enactment passed subsequently, and making no mention of any such intention, to have intended to derogate from that which, by their own special Act, they had thus carefully supervised and regulated.'—*In re Smith's Estate* (1887), 35 Ch. D. 589, at p. 595; 56 L. J. Ch. 726, at p. 729, Stirling, J.

Clause in private statute repealed by subsequent public Act.

"Although that section is not in terms repealed, yet it becomes a clause in a private Act of Parliament quite inconsistent with a clause in a subsequent public Act. That is sufficient to get rid of the clause in the private Act."—*The Great Central Gas Consumers Co. v. Clarke* (1862), 13 C. B. N. S. 838, at p. 840; 32 L. J. C. P. 41, at p. 43, Pollock, C. B.

Prior General and subsequent Special Act.

"In considering the question how far an enactment in a general statute is varied or excepted by the special Act, Lord Chancellor Westbury laid down the following rule, that 'if the particular Act gives in itself a complete rule on the subject, the expression of that rule would undoubtedly amount to an exception of the subject-matter of the rule out of the general Act.' *Ex parte St. Sepulchre, In re The Westminster Bridge Act* [(1864), 33 L. J. Ch. 372]."—*London, Chatham, and Dover Rail. Co. v. Wandsworth Board of Works* (1873), L. R. 8 C. P. 185, at p. 189; 42 L. J. M. C. 70, at p. 72, Keating, J., delivering the judgment of the Court (Bovill, C. J., and Keating and Brett, JJ.).

"In the next place it is to be borne in mind that where there are provisions in a special Act which are inconsistent with the provisions of a prior-general Act, the provisions of the general Act

must yield to those of the special Act. The case of *Att.-Gen. v. Great Eastern Rail. Co.* [(1872), L. R. 7 Ch. 475; (1873), L. R. 6 H. L. 367; 41 L. J. Ch. 505], is an authority for that, if authority was wanting. I believe that many other authorities would be found if they were looked for."—*Corporation of Yarmouth v. Simmons* (1878), 10 Ch. D. 518, at p. 528; 47 L. J. Ch. 792, at pp. 794, 795, Fry, J.

"In the result, I am of opinion that the argument of Mr. Kennedy, which, speaking in general terms, is neither more nor less than that the general law upon the question of compulsory pilotage is repealed by implication by the 39th section of the New Brighton Pier Act, 1864, cannot be sustained."—*The Clan Gordon* (1882), 7 P. D. 190, at p. 193, Sir Robert Phillimore.

Repeal by Implication.

Repeal by implication is never to be favoured.

"Every affirmative statute is a repeal by implication of a precedent affirmative statute, so far as it is contrary thereto: for *leges posteriores priores contrarias abrogant*."—7 *Bac. Abr. Statute* (D.), p. 442.

"A later Act of Parliament hath never been construed to repeal a prior Act, without words of repeal, unless there be a contrariety and repugnancy between them, or at least some notice taken of the former law in the subsequent one, so as to indicate an intention in the law-makers to repeal it."—*Middleton v. Crofts* (1736), 2 Atk. 650, at p. 675, Lord Hardwicke, L. C.

"I take the rule of law to be, that an affirmative statute is not, without express words, repealed by a subsequent affirmative statute, unless the two statutes cannot stand together."—*Ex parte Warrington* (1853), 3 D. M. & G. 159, at p. 171; 22 L. J. Bk. 33, at p. 39, Turner, L. J.

"So that the ordinary rule of construction applies—that if two statutes can be read together without contradiction, or repugnancy, or absurdity, or unreasonableness, they should be read together."—*The Queen v. Oastler* (1880), 50 L. J. M. C. 4, at p. 6; 43 L. T. 404, Brett, L. J.

"Repeal by implication is never to be favoured; it is no doubt the necessary consequence of inconsistent legislation whenever it occurs, but which must not be imputed to the legislature unless absolutely necessary."—*Dobbs v. Grand Junction Waterworks Co.* (1882), 9 Q. B. D. 151, at p. 158, Field and Bowen, JJ.

"When the repeal is not express, the burden is on those who assert that there is an implied repeal to show that the two statutes cannot stand consistently the one with the other."—*Lybbe v. Hart* (1885), 29 Ch. D. 8, at p. 15, Chitty, J.

"But it is a maxim of construction that where the provisions in two Acts of Parliament are clearly inconsistent, then there is of necessity an implied repeal of the inconsistent provisions of the earlier Act."—*The Queen v. Commissioners of Inland Revenue* (1888), 21 Q. B. D. 569, at p. 577; 57 L. J. M. C. 92, at p. 95, Field, J.

"Now a repeal by implication is only effected when the provisions of a later enactment are so inconsistent with, or repugnant to, the provisions of an earlier one, that the two cannot stand together, in which case the maxim, '*Leges posteriores priores contrarias abrogant*,' applies. Unless two Acts are so plainly repugnant to each other that effect cannot be given to both at the same time, a repeal will not be implied, and special Acts are not repealed by general Acts unless there is a necessary inconsistency in the two Acts standing together. *Thorpe v. Adams* [(1871), L. R. 6 C. P. 125; 40 L. J. M. C. 52]. Lord Coke, in *Gregory's Case* (1596), 3 Coke, p. 295, Part VI. 19b, lays it down 'that a later statute in the affirmative shall not take away a former Act, and *eo potior*, if the former be particular and the latter be general.' And Lord Hardwicke, in the case of *Middleton v. Crofts* [(1736), 2 Atk. 650, at p. 675], is to the same effect."—*Kutner v. Phillips*, [1891] 2 Q. B. 267, at pp. 271, 272; 60 L. J. Q. B. 505, at p. 507, A. L. Smith, J.

(See also *Churchwardens, &c. of West Ham v. Fourth City Mutual Building Society*, [1892] 1 Q. B. 654, at p. 658; 61 L. J. M. C. 128, at p. 130, A. L. Smith, J.)

Repeal saved by Incorporation.

"But there is a rule of construction that, where a statute is incorporated by reference into a second statute, the repeal of the first statute by a third does not affect the second."—*Clarke v. Bradlaugh* (1881), 8 Q. B. D. 63, at p. 69; 51 L. J. Q. B. 1, at p. 7, Brett, L. J.

Repeal of Sections modifying an unrepealed Act.

"But then a further argument was raised on their [the appellants'] behalf, for which we are indebted to the ingenuity of Mr. Druce. He argued that, assuming Lord Campbell's Act

[9 & 10 Vict. c. 93] to be modified only by the 504th and 505th sections of the Merchant Shipping Act, 1854 [17 & 18 Vict. c. 104], and not repealed by the Merchant Shipping Repeal Act, 1854 [17 & 18 Vict. c. 120], the modifications introduced by the above sections ought to be taken to have been incorporated into Lord Campbell's Act, and that, being so incorporated, they must subsist, notwithstanding the repeal of the above sections by the Merchant Shipping Amendment Act, 1862 [25 & 26 Vict. c. 63]. I must confess that in the complications of these Acts I felt at the time when this case was argued in some degree embarrassed by this argument; but on considering it I am satisfied that it cannot be supported. The modification introduced by these sections is not in terms incorporated into Lord Campbell's Act. It must, no doubt, have affected that Act so long as it subsisted, but when it was destroyed, its effect must have ceased. Otherwise, the consequence would be, that where any provision of an Act of Parliament has been modified by a subsequent Act, the modification would not be altered without at the same time repealing or altering the original Act, a proposition which cannot, I think, be maintained." — *Glaholm v. Barker* (1865), L. R. 1 Ch. 223, at p. 229; 35 L. J. Ch. 259, at p. 264, Turner, L. J.

Repeal by Private Statute.

One private statute cannot repeal another private statute except by express enactment, or necessary inconsistency.

"Now, it must be remembered that these several Acts, though declared public Acts, are substantially and in their nature private ones, and it is a rule of law that one private Act of Parliament cannot repeal another, except by express enactment; there is no such enactment in the defendants' Act in reference to those of the plaintiff; and the latter are therefore, I consider, unaffected by the former. I have said that, in my opinion, the rule of law as to the construction of such Acts is not to do anything which would be in effect a repeal of any clause, unless in a subsequent Act some words are inserted which would operate as an express repeal of the former. That appears to be the rule as laid down by the learned Judge Jenkyns in *Sir Foulk Grevill's Case*, reported in his work called 'Eight Centuries of Reports,' the Third Century, Case 41, p. 120." — *The Trustees of the Birkenhead Docks v. Laird* (1853), 23 L. J. Ch. 457, at p. 458; 4 D. M. & G. 732, Turner, L. J.

"Where two statutes give authority to two public bodies to exercise powers which cannot, consistently with the object of the legislature, co-exist, the earlier must necessarily be repealed by the later statute."—*Daw v. The Metropolitan Board of Works* (1862), 12 C. B. N. S. 161, at p. 174; 31 L. J. C. P. 223, at p. 224, Erle, C. J.

Repeal and Re-enactment.

"Their lordships . . . conceive that, in dealing with a statute which professes merely to repeal a former statute of limited operation, and to re-enact its provisions in an amended form, they are not necessarily to presume an intention to extend the operation of those provisions to classes of persons not previously subject to them, unless the contrary is shown; but that they are to determine on a fair construction of the whole statute, considered with reference to the surrounding circumstances, whether such an intention existed."—*Brown v. McLachlan* (1872), L. R. 4 P. C. 543, at p. 550; 42 L. J. P. C. 18, at p. 23, Sir W. Colville, delivering the judgment of the Judicial Committee.

Effect of Repeal and re-enactment in future Acts.

Interpretation Act, 1889 (52 & 53 Vict. c. 63).

Sect. 38 (1). "Where this Act or any Act passed after the commencement of this Act [1st January, 1890] repeals and re-enacts, with or without modification, any provisions of a former Act, references in any other Act to the provisions so repealed, shall, unless the contrary intention appears, be construed as references to the provisions so re-enacted."

Part VIII.—WILLS.

SECTION I.

	PAGE
Testator <i>Inops Consilii</i>	224
Illiterate Testator	224
Artificial Rules	225
Testator's Domicile	225
<i>Mobilia Sequuntur Personam</i>	225
Will containing Foreign Terms	228

Testator *Inops Consilii*.

Wills are more favoured in construction than formal deeds.

"I must not, however, omit, that in devises by last will and testament (which, being often drawn up when the party is *inops consilii*, are always more favoured in construction than formal deeds, which are presumed to be made with great caution, forethought, and advice)"—2 *Bl. Com.* p. 172.

Illiterate Testator.

"Every inaccuracy of grammar and every impropriety of terms shall be corrected, if that intention [of the testator consistent with the rules of law] be clear and manifest."—*Thellusson v. Woodford* (1799), 4 Ves. 227, at p. 311, Lawrence, J.

"The testator appears to have been an exceedingly illiterate man; and the rules of grammar and the usual meaning of technical language may be disregarded in construing his will. But we cannot strike out from his will any word which, standing where it is, has a clear and definite operation in the disposal of his property."—*Hall v. Warren* (1861), 9 H. L. C. 420, at p. 427, Lord Campbell, L. C.

Artificial Rules.

"I agree with the late Master of the Rolls (Sir George Jessel) that the artificial rules which have been laid down for the construction of wills have been carried too far, and that a will, especially one of personal property, ought to be construed according to the rules of construction applicable to all documents, and not according to such artificial rules. What I am saying does not apply to wills of real property, in which well-known technical phrases as to realty are used, and where, therefore, such will should be construed according to the established technical meaning of such words of art."—*In re Bedson's Trusts* (1885), 28 Ch. D. 523, at p. 525; 54 L. J. Ch. 644, at pp. 645, 646, Brett, M. R.

Testator's Domicile.

To the Court of the testator's domicile belongs the interpretation and construction of his will.

"To the Court of the domicile belongs the interpretation and construction of the will of the testator. To determine who are the next-of-kin or heirs of the personal estate of the testator, is the prerogative of the judge of the domicile. In short, the Court of the domicile is the *forum concursus* to which the legatees under the will of a testator, or the parties entitled to the distribution of the estate of an intestate, are required to resort. To these general rules must be added a remark on the great danger and inexpediency of the Court of a foreign country taking upon itself the task of interpreting the will of a testator, which is written, not in the language of that country, but in the language of the country of the domicile. I entirely adopt upon this point the opinion of Lord Lyndhurst in advising your lordships in the case of *Trotter v. Trotter* [(1828), 4 Bligh N. S. 502]."—*Enohin v. Wylie* (1862), 10 H. L. Cas. 1, at pp. 13, 14; 31 L. J. Ch. 402, at p. 405, Lord Westbury, L. C.

Mobilia Sequuntur Personam.

Personal property is subject to the law that governs the person.

"It is a clear proposition, not only of the law of *England*, but of every country in the world, where law has the semblance of

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science, that personal property has no locality. The meaning of that is, not that personal property has no visible locality, but that it is subject to that law which governs the person of the owner. With respect to the disposition of it, with respect to the transmission of it, either by succession or the act of the party, it follows the law of the person. The owner in any country may dispose of his personal property. If he dies, it is not the law of the country in which the property is, but the law of the country of which he was a subject, that will regulate the succession. For instance, if a foreigner, having property in the funds here, dies, that property is claimed according to the right of representation given by the law of his own country."—*Sill v. Worswick* (1791), 1 H. Bl. 665, at p. 690, Lord Loughborough, C. J.

The rule is inapplicable to immoveables, i.e., to land, whether held for a chattel interest or for a freehold interest.

"The territory and soil of England, by the law of nature and of nations, which is recognised also as part of the law of England, is governed by all statutes which are in force in England. This leasehold property in Belgrave Square is part of the territory and soil of England, and the fact that the testator had a chattel interest in it, and not a freehold interest, makes it in no way whatever less so. An Act of Parliament limiting the period for which accumulations are permitted, has as much force in Belgrave Square and upon every part of the property in the land of Belgrave Square, as it has in any other part of England: and for that purpose it appears to me to be totally immaterial what is the quantity of interest dealt with by the will. All the general doctrines and maxims which are to be found in any of the books of authority really go the same way. The passage which Mr. Fry quoted from Story, in which the words of Lord Loughborough were cited with approbation (see Story's Conflict of Laws, sect. 380, 2nd Ed.: 'It is a clear proposition not only of the law of England, but of every country in the world, where law has the semblance of science, that personal property has no locality. The meaning of that is, not that personal property has no visible locality, but that it is subject to that law which governs the person of the owner. With respect to the disposition of it, with respect to the transmission of it, either by succession or the act of the party, it follows the law of the

person. The owner in any country may dispose of his personal property. If he dies, it is not the law of the country in which the property is, but the law of the country of which he was a subject, that will regulate the succession'), is simply a translation into the phraseology of the English law of the maxim of the general law, *mobilia sequuntur personam*, and is certainly not meant to apply arbitrarily in a new sense, because Lord Loughborough used the word 'personal' instead of 'moveable.' The doctrine depends upon a principle which is expressed in the Latin words; and that is the only principle of the whole of our law as to domicile when applicable to the succession of what we call personal estate. It is so, not by any special law of England, but by the deference which, for the sake of international comity, the law of England pays to the law of the civilized world generally. Domicile is allowed in this country to have the same influence as in other countries in determining the succession of moveable estate; but the maxim of the law of the civilized world is *mobilia sequuntur personam*, and is founded on the nature of things. When 'mobilia' are in places other than that of the person to whom they belong, their accidental *situs* is disregarded, and they are held to go with the person. But land, whether held for a chattel interest or held for a freehold interest, is in nature, as a matter of fact, immoveable, and not moveable. The doctrine is inapplicable to it; and Story, in that very passage cited by Mr. Fry from placitum 447, manifestly recognises that where he says that all lands and all houses are necessarily immoveable; and then he speaks of their universally partaking of the law of immoveable property or 'property savouring of the realty'—language which must be used with respect to an interest less than fee simple, and less than what we call freehold; because to speak of a thing 'partaking' or 'savouring' implies that, by the positive law of the country, they also are made to partake and savour in some respects of a law not applicable to all kinds of immoveable property. I think, therefore, that the doctrine which appears to me to be clearly the true doctrine is recognised by necessary implication in those passages to which reference has been made; and Story says, with regard to some things, such as fixtures, which may or may not be moveable or immoveable, which are ambiguous in their nature, if they are at all connected with immoveable property,

then it belongs to the law of the country in which that property is situated to determine whether they should be deemed moveable or immoveable. The attempt to infer that things immoveable in their nature are to be considered moveable constructively, because the beneficial interest is allowed to go like the beneficial interest in and succession to moveables, appears to me to be quite turning away Story's doctrine from its real substance, which is this,—that so strong is the force of the immoveable character where it is found, that it will attract to itself *prima facie* things which are ambiguous, at least to the extent of obliging other nations to recognise the law of the place where the immoveable property is situate, as entitled to lay down the rule with regard to those ambiguous things connected with it.”—*Freke v. Lord Carbery* (1873), L. R. 16 Eq. 461, at pp. 466, 467, Lord Selborne, L. C., for M. R.

Will containing Foreign Terms.

“ In *Studd v. Cook* [(1883), 8 App. Cas. 577] there was a will made by a domiciled Englishman, dealing not only with English real property but also with real property in *Scotland*, but devising the real property in *Scotland* together with that in *England* according to English forms and in English terms, terms, I need hardly say, which, though intelligible in *Scotland*, are not known to the Scotch law. The majority of the judges in *Scotland* and the House of Lords decided that you must derive your knowledge of the intention of the testator by considering what the meaning of the technical terms was according to English law, and then give them an equivalent effect in *Scotland*. I do not think I have mistaken the effect of the decision of the House of Lords. I conceive, therefore, that if the testator in the present case were an Englishman and had made a will in the Scotch form, and if I came to the conclusion that he had adopted the Scotch form and used Scotch terms purposely, I should be bound to inquire what the force and effect of those Scotch terms were according to Scotch law, and then to give them their equivalent weight in construing his will in *England*.”—*Bradford v. Young* (1884), 26 Ch. D. 656, at p. 669; 54 L. J. Ch. 96, at p. 100, Pearson, J.

“ If we had come to the conclusion that the domicile was Scotch, I should have thought that as the will contained Scotch terms, the construction ought to be decided by Scotch law. . . . But I

am of opinion that his domicile at the time of his death was English. That being so, we come to the construction of this, as of any other English will. There is nothing to show that the testator intended it to be construed according to the law of Scotland. It is true there are some words used which are more frequently used in Scotch documents than in English, but this is not a document dealing with technical limitations of real estate, but only with personal estate the law of which depends upon the domicile of the testator."—*Bradford v. Young* (1885), 29 Ch. D. 617, at pp. 622, 623, Cotton, L. J.

"*Primâ facie*, being an English will it must be construed by English law, but it was drawn by a Scotch lawyer and certain Scotch terms were used in it, and it was contended that for that reason it ought to be construed as a Scotch document. I think this is a question of intention, and I see no indication of such an intention here. The will is perfectly intelligible to an Englishman. A few words might have to be explained, but this is not sufficient to induce us to depart from the general rule."—*Ibid.*, at p. 624, Lindley, L. J.

"The will looks like the production of a Scotchman trying to write like an Englishman. In my opinion, therefore, the will must be construed according to English law."—*Ibid.*, at p. 625, Fry, L. J.

(See as to will in French, *In re Cliff's Trusts*, [1892] 2 Ch. 229; 61 L. J. Ch. 130.)

SECTION II.

FORMS OF WILLS.

	PAGE
No Technical Form necessary	230
Original Will may be looked at	230
Blanks—A Golden Rule	230
Date of Wills	231
Punctuation of Wills	232

No Technical Form necessary.

“The rule of construction of wills is, ‘That *no technical form* is necessary to convey the testator’s meaning.’”—*Strong ex dem. Cummin v. Cummin* (1759), 2 Burr. 767, at p. 770, Lord Mansfield, C. J.

Original Will may be looked at.**Will partly in Print; Blanks in a Will.**

A golden rule—a will should be construed so as to lead to a testacy, not to an intestacy.

“In my opinion when you have to construe a disputed will you must look at the will and read it. You must use your eyes as one of the means given you to enable you to construe what people have said. The main argument in this case is founded on there being a blank in the will, and how can you tell that there is a blank without looking at the will? I know of no rule that for the purpose of construing a will you may not look at the original will itself. Looking at the will in the present case, it is impossible not to take notice of the fact that part of it is in a common form, not drawn up for the purpose of this particular will. The blank spaces were not left by the testatrix herself, but were left for the purpose of being filled up by any testator who might happen to use the form. When the form is filled up as a will, it must be read according to ordinary loose English grammar and ideas. There is one rule of construction which to my mind is a golden rule, viz., that when a testator has executed a will in solemn form, you must assume that he did not intend to make it a solemn farce,—that he did not intend to die intestate when he has gone through the form of making a will. You ought, if possible, to read the will so as to lead to a testacy, not to an intestacy. This is a

golden rule.”—*In re Harrison* (1885), 30 Ch. D. 390, at pp. 393, 394; 55 L. J. Ch. 799, at p. 800, Lord Esher, M. R.

“I am of the same opinion. I fully agree that for many purposes the first thing to be looked at is the probate copy of a will. But when I look at the probate copy in this case I find that there is a blank space in it. This is consistent either with an accidental omission to fill up the blank, or with an intention not to fill it up. It then becomes very material to look at the original will, and upon looking at it we find that it is on a printed form in which blanks are left for the purpose of being filled up by the person using it. The testatrix has not filled in this blank, and I think the only way in which you can construe the words is by reading them as if they were consecutive. The conclusion that the testatrix intended to fill up the blank at some future time would be inconsistent with her declared intention to revoke all former wills and make that her last will and testament.”—*Ibid.*, at p. 394, Baggallay, L. J.

Date.

Will speaks and takes effect from testator's death.

The Wills Act, 1837 (7 Will. IV. & 1 Vict. c. 26).

Sect. 24. “Every will [not made before 1st January, 1838] shall be construed, with reference to the real estate and personal estate comprised in it, to speak and take effect as if it had been executed immediately before the death of the testator, unless a contrary intention shall appear by the will.”

The date is only primâ facie evidence of the time when the will was made.

“Supposing the general rule as to the exclusion of parol evidence to apply to cases of this kind [wills], Dr. Wambey has cited abundant authority to show that it has no application to the date of the instrument. . . . Then comes the case in the House of Lords [*Randfield v. Randfield* (1860), 6 Jur. N. S. 901; 30 L. J. Ch. 177] where parol evidence was admitted, apparently without a question being raised, showing that a will purporting on the face of it to be executed before the passing of the Wills Act, was actually executed after the Act came into operation.”—*Reffell v. Reffell* (1866), L. R. 1 P. & M. 139, at p. 142; 35 L. J. P. 121, at p. 122, Sir J. P. Wilde.

Punctuation.

"My Lords, as far as punctuation is concerned, I believe there is no trace of any punctuation in the original will; but whether that be so or not, I entirely concur in the opinion expressed by Sir William Grant, in a case before him [*Sandford v. Raikes* (1816), 1 Mer. 646—651], that 'it is from the words, and from the context, and not from the punctuation,' that the meaning of the testator is to be collected."—*Gordon v. Gordon* (1871), L. R. 5 H. L. 254, at p. 276, Lord Westbury.

SECTION III.

CASES ON WILLS.

"We are not to draw the sources of our judgment from the mere language or construction of other wills differently compounded, but from the language and intention of the testator in the will before us, or, as it is sometimes expressed, *ex visceribus testamenti*."—*Doe d. Wright v. Jesson* (1816), 5 M. & S. 95, at p. 97, Lord Ellenborough, C. J.

"Undoubtedly, it is a difficult thing, after this long interval of time (since 1812), to arrive at any different interpretation, but, nevertheless, it is your lordships' duty not to accept any construction merely upon the credit due to high authority; unless you conscientiously believe it to be the construction which most accords with the words, and best effectuates the intention of the testator."—*Parker v. Tootal* (1865), 11 H. L. Cas. 143, at p. 158; 34 L. J. Ex. 198, at p. 202, Lord Westbury, L. C.

"The rule had often been departed from that authorities are not to be cited in cases of construction unless to lay down some general principle, or to explain some technical expression. . . . He should always endeavour to prevent the decisions of other judges upon the words of other wills being cited as a guide for the construction of words resembling them in the will before him."—*Waring v. Currey* (1873), 22 W. R. 150, Jessel, M. R.

"The Court has to say what was the intention as appearing from the whole will. Cases can be of but little use, for the words of one will are seldom the same as those of another; but, no doubt,

when it has been held that a particular devise indicates an intention so strong that other words must be strained to give way to it, that is a great help to those who argue that other words must give way to a similar devise; and where it has been held that some particular words indicate so strongly an intention that they cannot be strained to give way to a general indication of intention, it is a help to those who argue that they should not give way."—*Rhodes v. Rhodes* (1882), 7 App. Cas. 192, at p. 206; 51 L. J. P. C. 53, at pp. 58, 59, Lord Blackburn, delivering the judgment of the Judicial Committee.

SECTION IV. INTENTION.

	PAGE
Discovery of Testator's intention	233
Golden Rule	236
Circumstances	237
Spirit and Letter	240
General and Special Intents	241

DISCOVERY OF TESTATOR'S INTENTION.

The intention of dying intestate is not to be imputed to a testator.

"There is the other rule which the Court always acts upon, namely, not to impute to a testator the intention of dying intestate."—*In re Redfern* (1877), 6 Ch. D. 133, at p. 136; 47 L. J. Ch. 17, at p. 19, Bacon, V.-C.

"There is one rule of construction which, to my mind, is a golden rule, viz., that where a testator has executed a will in solemn form, you must assume that he did not intend to make it a solemn farce—that he did not intend to die intestate where he has gone through the form of making a will. You ought, if possible, to read the will so as to lead to a testacy, not to an intestacy. This is a golden rule."—*In re Harrison* (1885), 30 Ch. D. 390, at pp. 393, 394; 55 L. J. Ch. 799, at p. 800, Lord Esher, M. R.

Intention, how known.

"It is to be observed, that where the words of a will have a plain sense, and no doubt is in any matter within or without the

words touching the matter of the devise, there the words of the will shall always be taken to be the intent of the deviser, and his intent to be what the words say."—*Bac. Ab. Wills and Testaments*, G.

Intention ought to be agreeable to the rules of law.

Intention ought to be collected out of every part of the will.

"As touching the general rules to be observed for the true construction of wills *in testamentis plenius testatoris intentionem scrutamur*. But yet this is to be observed with these two limitations: (1) His intent ought to be agreeable to the rules of law; (2) This his intent ought to be collected out of the words of the will. As to this, it may be demanded, how shall this be known? To this it may be thus answered: (1) To search out what was the scope of his will; (2) To make such a construction, so that all the words of the will may stand: for to add anything to the words of the will, or in the construction made to relinquish and leave out any of the words is *maledicta glossa*. But every string ought to have his sound."—*Blamford v. Blamford* (1615), 3 Buls. 103, Dodderidge, J.

"It is a certain rule, in the exposition of wills especially, that every word shall have its effect and not be rejected if any construction can possibly be put upon it."—*Barker v. Giles* (1725); 2 P. Wms. 279, at p. 282, King, L. C.

"The intention of a testator is to be collected from the *whole* of his will, *ex visceribus testamenti*; so as to leave the mind quite satisfied about what the testator meant; and as a will of lands must be in *writing* such construction of the testator's intention must be founded upon the *writing itself*."—*Baddeley v. Leppingwell* (1764), 3 Burr. 1533, at p. 1541, Wilmot, J.

"It is a certain rule of construction, that every word of a will must have a meaning imputed to it, if it is capable of a meaning without a violation of the general intent, or of any other provision in the will, with which it may appear inconsistent."—*Rceves v. Brymer* (1799), 4 Ves. 692, at p. 697, Sir R. P. Arden, M. R.

"I know no rule I can adopt more safely than that, which I did adopt in *Sims v. Doughty* [(1800), 5 Ves. 243 (see the note, 2nd edition, p. 247)], and upon which I have always acted, *viz.*, to give effect to every word of the will; provided an effect can be given to

it not inconsistent with the general intent of the whole will, taken together; for if the general intention can be collected, it is the duty of the Court to adapt every regulation to that general intent.”—*Constantine v. Constantine* (1801), 6 Ves. 100, at p. 102, Sir W. Grant, M. R.

“We have now reached the sound rule, that for the purpose of collecting the intention, every part of the will must be considered. That rule was first established by the great judge whom we have just lost, the late Master of the Rolls (Sir W. Grant), and was confirmed by myself in *Bootle v. Blundell* [(1815), 1 Mer. 193].”—*Gittens v. Steele* (1818), 1 Swanst. 24, at p. 28, Lord Eldon, L. C.

“Another undoubted rule of construction is, that every part of that which the testator meant by the words he has used should be carried into effect as far as the law will permit, but no further; and that no part should be rejected, except what the law makes it necessary to reject.”—*Doe d. Gallini v. Gallini* (1833), 5 B. & Ad. 621, at p. 641, Denman, C. J.

Testator's Object.

“I took occasion a few days ago [*Thellusson v. Woodford* (1799), 4 Ves. 227, at p. 329] to observe, that in construing a will I should not go upon grounds of favour or disfavour to the object of the testator, if I could discover his intention.”—*Innes v. Johnson* (1799), 4 Ves. 568, at p. 574, Sir R. P. Arden, M. R.

“Whilst the intention of the testator ought to be our only guide to the interpretation of his will, it must be his intention to be collected from the words employed by himself in his will. No surmise or conjecture of any object which the testator may be supposed to have had in view can be allowed to have any weight in the construction of his will, unless such object can be collected from the plain language of the will itself.

“We hold it to be a necessary rule in the investigation of the intention of a testator, not only that we ought to look to the words of the will alone, to determine the operation and effect of the devise, but that we ought to disregard altogether the legal consequences which may follow from the nature and qualities of the estate, when such estate is once collected from the words of the will itself.”—*The Earl of Scarborough v. Doe d. Savile* (1836), 3 A. & E. 897, at pp. 962, 963, Tindal, C. J., delivering the judgment of the Exchequer Chamber.

Golden Rule.

The grammatical and ordinary sense of the words is to be adhered to, unless that would lead to some absurdity, or some repugnance or inconsistency with the rest of the instrument, in which case the grammatical and ordinary sense of the words may be modified, so as to avoid that absurdity and inconsistency, but no further.

“The rule of construction, and the rule which, in modern times particularly, the Courts have always been anxiously inclined to follow, has been to adhere as rigidly as possible to the express words that are found, whether in wills or in deeds, and to give to those words their natural ordinary meaning, unless by so doing it appears from the context that you are using them in a different sense from that in which the testator or the maker of the deed intended to use them, or, unless by so using them, you would be doing something which would manifestly lead to an inconsistency, which could not have been the intention of the party making the instrument.”—*Grey v. Pearson* (1857), 6 H. L. Cas. 61, at p. 78; 26 L. J. Ch. 473, at p. 477, Lord Cranworth, L. C.

“I have been long and deeply impressed with the wisdom of the rule, now I believe universally adopted, at least in the Courts of law in Westminster Hall, that in construing wills, and indeed statutes and all written instruments, the grammatical and ordinary sense of the words is to be adhered to, unless that would lead to some absurdity, or some repugnance or inconsistency with the rest of the instrument, in which case the grammatical and ordinary sense of the words may be modified, so as to avoid that absurdity and inconsistency, but no further. This is laid down by Mr. Justice Burton in a very excellent opinion which is to be found in the case of *Warburton v. Loveland* [(1828), 1 Huds. & B. (Ir.) 623, at p. 648].”—*Ibid.*, at p. 106; L. J. at p. 481, Lord Wensleydale.

(See also *Abbott v. Middleton* (1858), 7 H. L. Cas. 68, at p. 114; 28 L. J. Ch. 110, at p. 114, and *Thellusson v. Rendlesham* (1859), 7 H. L. Cas. 429, at p. 519; 28 L. J. Ch. 948, at p. 966, where Lord Wensleydale lays down the same rule.)

“Now, in construing instruments, I have always followed the rule laid down by the House of Lords in *Grey v. Pearson* [(1857), 6 H. L. Cas. 61; 26 L. J. Ch. 473], which is to construe the instrument according to its literal import, unless there is something in the subject or context which shows that that cannot be the meaning of the words.”—*Lowther v. Bentinck* (1874), L. R. 19 Eq. 166, at p. 169; 44 L. J. Ch. 197, at p. 198, Jessel, M. R.

"All these refinements and nice distinctions of words appear to me to be inconsistent with the modern view—which is, I think, in accordance with reason and common sense—that, whatever the instrument, it must receive a construction according to the plain meaning of the words and sentences therein contained. But I agree that you must look at the whole instrument, and, inasmuch as there may be inaccuracy and inconsistency, you must, if you can, ascertain what is the meaning of the instrument taken as a whole, in order to give effect, if it is possible to do so, to the intention of the framer of it. But it appears to me to be arguing in a vicious circle to begin by assuming an intention apart from the language of the instrument itself, and having made that fallacious assumption to bend the language in favour of the assumption so made."—*Leader v. Duffey* (1888), 13 App. Cas. 294, at p. 301; 58 L. J. P. C. 13, at p. 16, Lord Halsbury, L. C.

Cited and approved in *In re Hamlet* (1888), 39 Ch. D. 426, at p. 435; 58 L. J. Ch. 242, at pp. 246, 247, per Cotton, L. J.

Circumstances.

When circumstances are to be looked at.

"Speaking philosophically, you must always look beyond the instrument itself, to some extent, in order to ascertain who is meant: for instance, you must look to names and places. There may, indeed, be no difficulty in ascertaining who is meant, when a person who has five or six names, and some of them unusual ones, is described in full; while, on the other hand, a devise simply to John Smith would necessarily create some uncertainty."—*Clayton v. Lord Nugent* (1844), 13 M. & W. 200, at p. 207; 13 L. J. Ex. 363, at p. 366, Rolfe, B.

"Primarily the words of the will are to be considered. They convey the expression of the testator's wishes; but the meaning to be attached to them may be affected by surrounding circumstances, and, where this is the case, those circumstances no doubt must be regarded. Amongst the circumstances thus to be regarded, is the law of the country under which the will is made and its dispositions are to be carried out. If that law has attached to particular words a particular meaning, or to a particular disposition a particular effect, it must be assumed that the testator, in the dispositions which he has made, had regard to that meaning or to that effect, unless the language of the will or the surrounding circumstances displace that assumption."—*Dossee v. Mullick* (1857), 6 Moo. Ind.

App. Cas. 526, at pp. 550, 551, Turner, L.J., delivering the judgment of the Judicial Committee.

"I am aware that, if there be a doubtful construction of a will, the circumstances of the case may be used to guide our choice; but we must not first make the construction, which is clear in itself, doubtful in order to make what we think a more reasonable will for the testator. It is not enough that a will may admit of a forced construction. Of course, if it would not, no circumstances could alter the words."—*Gordon v. Gordon* (1871), L. R. 5 H. L. 254, at p. 271, Lord Hatherley, L. C.

"The general rule is that, in construing a will, the Court is entitled to put itself in the position of the testator, and to consider all material facts and circumstances known to the testator with reference to which he is to be taken to have used the words in the will, and then to declare what is the intention evidenced by the words used with reference to those facts and circumstances which were (or ought to have been) in the mind of the testator when he used those words. As is said in *Wigram on Extrinsic Evidence*, p. 9, 'The question in expounding a will is not what the testator meant, as distinguished from what his words express, but simply what is the meaning of his words.' But we think that the meaning varies according to the circumstances of and concerning which they are used. In *Doe d. Hiscocks v. Hiscocks* [(1839), 5 M. & W. 363, at pp. 367, 368; 9 L. J. Ex. 27, at p. 29] in the judgment of the Court of Exchequer it is said, 'The object in all cases is to discover the intention of the testator. The first and most obvious mode of doing this is to read his will as he has written it, and collect his intention from his words. But as his words refer to facts and circumstances respecting his property and his family, and others whom he names and describes in his will, it is evident that the meaning and application of his words cannot be ascertained without evidence of all those facts and circumstances. All the facts and circumstances, therefore, respecting persons or property to which the will relates, are undoubtedly legitimate, and often necessary evidence to enable us to understand the meaning and application of his words.'

"No doubt in many cases the testator has for the moment forgotten or overlooked material facts and circumstances which he well knew. And the consequence sometimes is that he uses words which express an intention which he would not have wished to express, and would have altered if he had been reminded of the

facts and circumstances. But the Court is to construe the will as made by the testator, not to make a will for him, and, therefore, it is bound to execute his expressed intention, even if there is great reason to believe that he has, by blunder, expressed what he did not mean. And the general rule, we believe, is undisputed, that in trying to get at the intention of the testator, we are to take the whole of the will, construe it altogether, and give the words their natural meaning (or, if they have acquired a technical sense, their technical meaning), unless, when applied to the subject-matter which the testator presumably had in his mind, they produce an inconsistency with other parts of the will, or an absurdity or inconvenience so great as to convince the Court that the words could not have been used in their proper signification, and to justify the Court in putting on them some other signification which, though less proper, is one which the Court thinks the words will bear. The great difficulty in all cases is in applying these rules to the particular case, for to one mind it may appear that an effect produced by construing the words literally is so inconsistent with the rest of the will, or produces an absurdity or inconvenience so great as to justify the Court in putting on them another signification, which to that mind seems a not improper signification of the words, whilst to another mind the effect produced may appear not so inconsistent, absurd, or inconvenient as to justify putting any other signification on the words than their proper one, and the proposed signification may appear a violent construction.

"*Grey v. Pearson* [(1857), 6 H. L. Cas. 61; 26 L. J. Ch. 473], is an example of this. Lord Cranworth, Lord St. Leonards, and Lord Wensleydale laid down the general rules in terms not substantially differing from each other, but when they came to apply them to the case in hand there was a marked difference of opinion. We apprehend that no precise line can be drawn, but that the Court must, in each case, apply the admitted rules to the case in hand, not deviating from the literal sense of the words without sufficient reason, or more than is justified; yet not adhering slavishly to them, when to do so would obviously defeat the intention which may be collected from the whole will."—*Allgood v. Blake* (1873), L. R. 8 Ex. 160, at pp. 162, 163; 42 L. J. Ex. 101, at pp. 103, 104, Blackburn, J., delivering the judgment of the Exchequer Chamber (Blackburn, Keating, Mellor, Grove, and Honyman, JJ.).

"In construing the will of the testator . . . it is necessary

that we should put ourselves, as far as we can, in the position of the testator, and interpret his expressions as to persons and things with reference to that degree of knowledge of those persons and things which, so far as we can discover, the testator possessed.”—*Bathurst v. Errington* (1877), 2 App. Cas. 698, at p. 706; 46 L. J. Ch. 748, at p. 752, Lord Cairns, L. C.

“The general rule as to the construction of wills has often been laid down, and generally in terms not substantially differing from each other. About thirty years ago there did arise a great difference of opinion amongst the noble and learned lords who then sat in the House of Lords as to the manner in which that rule should be applied. . . . In *Thellusson v. Rendlesham* [(1859), 7 H. L. Cas. 429; 28 L. J. Ch. 948, at p. 966], there was a difference of opinion among the judges who were consulted, but there was none amongst the lords. Lord Cranworth says (p. 494): ‘The rule on which the appellant relies is that universally recognised and acted on, namely, that words are to be construed according to their plain ordinary meaning, unless the context shows them to have been used in a different sense, or unless the rule, if acted on, would lead to some manifest absurdity or incongruity; indeed, the latter branch of the rule is, perhaps, involved in the former, for, supposing that the rule, if acted on, would lead to manifest absurdity or incongruity, the context must be considered to show that the words could not have been used in their ordinary sense.’” —*Rhodes v. Rhodes* (1882), 7 App. Cas. 192, at pp. 204, 205; 51 L. J. P. C. 53, at p. 58, Lord Blackburn, delivering the judgment of the Judicial Committee.

Spirit and Letter.

The spirit may overcome the letter.

“In common with all men, I must acknowledge that there are many cases upon the construction of documents in which the spirit is strong enough to overcome the letter—cases in which it is impossible for a reasonable being, upon a careful perusal of an instrument, not to be satisfied from its contents that a literal, a strict, or an ordinary interpretation given to particular passages would disappoint and defeat the intention with which the instrument read as a whole persuades and convinces him that it was framed. A man so convinced is authorized and bound to construe the writing accordingly.”—*Key v. Key* (1853), 4 D. M. & G. 73, at p. 84; 22 L. J. Ch. 641, at p. 647, Knight Bruce, L. J.

"When the main purpose and intention of the testator are ascertained to the satisfaction of the Court, if particular expressions are found in the will which are inconsistent with such intention, though not sufficient to control it, or which indicate an intention which the law will not permit to take effect, such expressions must be discarded or modified; and, on the other hand, if the will shows that the testator must necessarily have intended an interest to be given which there are no words in the will expressly to devise, the Court is to supply the defect by implication, and thus to mould the language of the testator, so as to carry into effect, as far as possible, the intention which it is of opinion that the testator has on the whole will sufficiently declared."—*Towns v. Wentworth* (1858), 11 Moo. P. C. 526, at p. 543, The Right Hon. T. Pemberton Leigh, delivering the judgment of the Judicial Committee. (Both the above quotations cited by Hall, V.-C., in *Sweeting v. Prideaux* (1876), 2 Ch. D. 413, at pp. 415, 416; 45 L. J. Ch. 378, at p. 379, and by North, J., in *Mellor v. Daintree* (1886), 33 Ch. D. 198, at p. 206; 56 L. J. Ch. 33, at p. 37.)

"Now, no doubt, the mere letter of the will, or any other instrument, is not to be adhered to if a contrary signification can be suggested by the whole context of the instrument. The spirit is to prevail, and the letter is not to be allowed to kill. That I take to be a plain, clear canon of construction."—*In re Redfern* (1877), 6 Ch. D. 133, at p. 136; 47 L. J. Ch. 17, at pp. 18, 19, Bacon, V.-C.

The words "so far as the rules of law and equity permit."

"But it is to be observed that the declared intention of the testator is not to join the chattels to the real estate absolutely, but only so far as the rules of law and equity will permit; and, although these words will not correct a gift which in terms infringes the rule against perpetuity, they may be fairly referred to when the construction warranted by the words used is impugned on the score of inconsistency with the intention of the testator."—*Harrington v. Harrington* (1868), L. R. 3 Ch. 564, at p. 574; 37 L. J. Ch. 593, at p. 597, Lord Cairns, L. C.

General and Special Intents.

Effect is to be given to the general or paramount intent.

"By that case [*Robinson v. Robinson* (1757), 1 Burr. 38] this position is clearly established—That in the construction of a will we must

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first look to the general intent of the devisor, and give effect to that; and if there be a secondary intent which interferes with it, we are to reconcile the whole as far as we can; but at all events to give effect to the general intention. In that case the special intent was defeated."—*Doe d. Bean v. Halley* (1798), 8 T. R. 5, at p. 9, Lord Kenyon, C. J.

"It appears to be clearly established by the authorities which have been cited, that a particular intent expressed in a will must give way to a general intent."—*Doe d. Bagnall v. Harvey* (1825), 4 B. & C. 610, at p. 620, Abbott, C. J.

"There is the doctrine usually called *cy-près*. It has been said that that doctrine only applies to executory trusts; but that is not so. In the first place, the doctrine is not properly called *cy-près* at all; it is merely a rule of construction—a rule of construction, that is, by which you sacrifice the particular intent to the general intent, or the subordinate intent to the paramount intent. When you find two intents in a will which are inconsistent with each other, and you therefore cannot carry out both, you give effect to the general or paramount intent. The rule applies just as much to direct devises as to executory trusts—where trustees are directed to convey or do some other act. That the doctrine is a rule of construction is laid down in the most express terms by Lord Romilly in *Parfitt v. Hember* [(1867), L. R. 4 Eq. 443, at p. 446]. It may be said that that was only a *dictum*, not necessary for the decision of the case, but I will now refer to another case which is an actual decision on the point, namely, *Monypenny v. Dering* [(1847), 16 M. & W. 418; 17 L. J. Ex. 81]. That was a case which was sent to a Court of Law—the Court of Exchequer—and therefore the judges could only treat the case as one of express and direct legal devise."—*Hampton v. Holman* (1877), 5 Ch. D. 183, at pp. 190, 191; 46 L. J. Ch. 248, at p. 250, Jessel, M. R.

SECTION V.

	PAGE
Meaning derived from the Will itself	243
Vocabulary of Ordinary Life	245
Technical Words and Expressions	246
Words capable of a Two-fold Construction	249
Same Words in different Parts	249
Transposing Words	250
Inconsistency	250
Rejecting Words	250
Superfluous Words	251
Omission Supplied	252
Caprice	252
Misdescription	253
Ambiguities	254
Latent or Patent	254
Latent	255
Patent	255

Meaning to be derived from the Will itself.

"Upon the rules and principles, that I have ever thought it my duty to observe in the administration of justice, I have ever thought it imposed upon me not to make any intendment contrary to the plain and usual sense of the words used; unless from other parts of the will I could plainly see, that the testator could not have intended them to have that extensive operation the words themselves could carry."—*Ex parte The Earl of Ilchester* (1803), 7 Ves. 348, at p. 368, Lord Alvanley, C. J.

"That the exposition of every will must be founded on the whole instrument, and be made *ex antecedentibus et consequentibus* is one of the most prominent canons of testamentary construction. Yet where between the parts there is no connection by grammatical construction, or by some reference express or implied, and where there is nothing in the will declarative of some common purpose, from which it may be inferred that the testator meant a similar disposition by such different parts; though he may have varied his phrase, or expressed himself imperfectly, the Court cannot go into one part of a will to determine the meaning of another *perfect in itself* and *without ambiguity*, and not militating with any other provision respecting the same subject-matter: notwithstanding that a more probable disposition for the testator to have made may be collected from such assisted construction. . . .

Where the words of the two devises are different, the more natural conclusion is, that as his expressions are varied, they were altered because his intention on both cases was not the same.”—*Right ex dem. Compton v. Compton* (1808), 9 East 267, at pp. 272, 273, Lord Ellenborough, C. J.

“It is a common rule of construction, that if the words of a gift are of themselves plain, distinct and capable of having a legal effect, effect must be given to them, notwithstanding any improbability which may arise from looking at other parts of the will; but on the other hand, if the words are ambiguous in expression or effect, they are not to be rejected for uncertainty, but you must collect, if you can, from the other parts of the will, an indication of what the testator meant by those words, which by themselves appear to be ambiguous.”—*Wilson v. Eden* (1848), 11 Beav. 289, at p. 296; 17 L. J. Ch. 459, Lord Langdale, M. R.

Particular meaning affixed by testator.

“It is a canon of construction, that where a testator has affixed a particular meaning to a word in one part of his will, it shall be construed as having the same meaning in all other parts of his will, if it do not violate the sense.”—*Rhodes v. Rhodes* (1859), 27 Beav. 413, at p. 417, Sir John Romilly, M. R.

Taking the testator's will as the dictionary.

“If you find that that is the nomenclature used by the testator, taking his will as the dictionary from which you are to find the meaning of the terms he has used, that is all which the law, as I understand the cases, requires.”—*Hill v. Crook* (1873), L. R. 6 H. L. 265, at p. 285; 42 L. J. Ch. 702, at p. 716, Lord Cairns.

“Taking, as Lord Cairns puts it [in *Hill v. Crook* (1873), L. R. 6 H. L. 265, at p. 285; 42 L. J. Ch. 702, at p. 716], the testator's will as his dictionary, from which I am to find the meaning of the terms he has used, that is the principle on which I am to construe the will.

“What I understand Lord Cairns to lay down is this, that you are to look at the will itself to ascertain the sense in which the testator used the words which you find there, and if, on applying them to the facts of the case, as known to the testator, you find that he attached to them a different meaning from that which is their proper legal sense, you are bound so to construe the will and to give effect to the will, not in its strict legal sense, but in the way

in which the testator himself used the words.”—*In re Horner* (1887), 37 Ch. D. 695, at p. 703; 57 L. J. Ch. 211, at pp. 214, 215, Stirling, J.

Vocabulary of Ordinary Life.

“I think the rule cannot be laid down better than it was by Lord Eldon, C., in *Church v. Mundy* [(1808), 15 Ves. 396, at p. 406], where he says: ‘I am strongly influenced towards the opinion that a Court of justice is not, by conjecture, to take out of the effect of general words property which those words are always considered as comprehending. . . . The best rule of construction is that which takes the words to comprehend a subject that falls within their usual sense, unless there is something like declaration plain to the contrary. . . .’”—*Doe d. Howell v. Thomas* (1840), 1 M. & G. 335, at p. 346, Tindal, C. J. (cited also by Lord Esher, M. R., in *Anderson v. Anderson*, [1895] 1 Q. B. 749, at p. 753; 64 L. J. Q. B. 457, at p. 458).

“A will may be so worded as to show that, according to a reasonable construction of it, the testator must have intended to use those terms (‘goods, chattels, and effects’) in a limited and restricted sense, and when this appears, the intention so collected must have effect given to it. It is, however, incumbent on those who contend for the limited construction, to show that a rational interpretation of the will requires a departure from that which, ordinarily and *prima facie*, is the sense and meaning of the words. Such I take to be in substance the rule to be collected from all the authorities.”—*Parker v. Marchant* (1842), 1 Y. & C. 290, at p. 300; 11 L. J. Ch. 223, at p. 226, Knight Bruce, V.-C.

“It may be repetition or the mere utterance of a truism to say, as I venture nevertheless to do, that if a will taken as a whole shows that the testator has used in it any word in a sense and with a meaning different from the ordinary or correct interpretation of the word, and shows also what are the sense and meaning attributed to the word by the testator, it must be construed according to that sense, to that meaning.”—*Pride v. Fooks* (1858), 3 De G. & J. 252, at p. 266, Knight Bruce, L. J.

“The primary duty of a court of construction, in the interpretation of wills, is to give to each word employed, if it can with propriety receive it, the natural ordinary meaning which it has in the vocabulary of ordinary life, and not to give to words employed

in the vocabulary of ordinary life an artificial, secondary and technical meaning.”—*Young v. Robertson* (1862), 4 Macq. H. L. Cas. 314, at p. 325, Lord Westbury, L. C.

“That (the meaning of ‘nephew’) is a question not of law but of the English dictionary, and, according to my view of the English language, the ordinary meaning of the words, &c.”—*Wells v. Wells* (1874), L. R. 18 Eq. 504; 43 L. J. Ch. 681, at p. 683, Jessel, M. R.

Technical Words and Expressions.

If technical words are used, by whomsoever they are written, they must be considered as used with their technical meaning, unless the testator in the context shows that he meant to use them in a different sense.

“Where the testator expresses himself in legal words, they are not to be left to follow the intent arising by other words that are doubtful and afford implications only; for when we quit clear and settled rule, which the law sets up for our guide, and follow such intent, we leave certainty for uncertainty.”—*Bagshaw v. Spencer* (1743), 2 Atk. 570, at p. 575, Lord Hardwicke, L. C.

“The general rule which is laid down in the books, and on which alone courts can with any safety proceed in the decision of questions of this kind, is to collect the testator’s intention from the words which he has used in his will, and not from conjecture. It is not necessary that any technical or artificial form of words should be used in a will; but we must collect the meaning of the testator from those words which he has used, and cannot add words which he has not used.”—*Hay v. The Earl of Coventry* (1789), 3 T. R. 83, at p. 85, Lord Kenyon, C. J.

“If by giving to the words which a testator has used their literal and technical effect, inconsistent and absurd conclusions must necessarily follow; and if by understanding such words more largely the whole will would be rendered rational and consistent, the Court which departs from the literal and technical sense of the words does not adopt conjecture as opposed to expressed intention, but has recourse to a sound rule for collecting what is the intention which is really meant to be expressed.”—*Vauchamp v. Bell* (1822), 6 Mad. 343, at p. 346, Sir John Leach, V.-C.

“The rule of construction is, that technical words, or words of

known legal import, must have their legal effect, even though the testator uses inconsistent words, unless those inconsistent words are of such a nature as to make it perfectly clear that the testator did not mean to use the technical words in their proper sense; and so it is said by Lord Redesdale in *Jesson v. Wright* [(1820), 2 Bligh 1, at p. 57].”—*Doe d. Gallini v. Gallini* (1833), 5 B. & Ad. 621, at p. 640, Denman, C. J.

“In order to determine the meaning of a will, a court must read the language of the testator in the sense which he himself appears to have attached to the expressions that he has used, with this qualification, that when a rule of law has affixed a certain determinate meaning to technical expressions, that meaning must be given to them, unless the testator has, by his will, excluded beyond all doubt such construction.”—*Towns v. Wentworth* (1858), 11 Moore P. C. 526, at p. 543, The Right Hon. T. Pemberton Leigh, delivering the judgment of the Judicial Committee.

“It is another and most important rule in the construction of the words used in a will, that technical terms, or words of known legal import, must have their proper legal effect attributed to them, although the testator uses inconsistent terms or gives repugnant and impossible directions. To deprive the technical words of their appropriate sense, there must be sufficient to satisfy a judicial mind that they were meant by the testator to be used in some other sense, and to show what that sense is.”—*Roddy v. Fitzgerald* (1858); 6 H. L. C. 823, at p. 877, Lord Wensleydale.

“If the will is drawn by an illiterate man, by a country school-master, and you find attempts every now and then to use technical words in an absurd and improper sense, you know at once that the testator has not had good counsel, and you give a reasonable construction in order to carry out his intention although it may be obscurely expressed. If a man has his will drawn by a learned and competent person who uses technical words, those technical words become the words of the testator and they are to be construed according to his intention. Well, what is the intention of a man whose will is regularly framed in technical words? Why, that it should receive a technical construction. What is the object of words of science and art except to prevent circumlocution, and to enable those who understand the science or the art at once to comprehend, by one expression, all that is intended? But here, when we come as lawyers to look at a technically drawn will, we are asked, and particularly pressed at the Bar, not to introduce

our own mode of thought into this will. That is to ask those who have to decide this case to divest themselves of their knowledge; to request them to unlearn all that they may have learnt of law. But I say this cannot be done, and you ought not so to divest yourself of your knowledge; you have to decide upon a technical will according to the meaning of technical terms. Show me that there is any discrepancy in the words used, and that they do not admit of being taken in their technical and proper sense, then, beyond all doubt, technical words may, in such a case, be corrected by a clear intention shown in the will. Nobody who ever presided in a court of justice could be more willing than I am to give to words their natural import and force whether they be technical or not. But when I have before me technical words, and I have to address myself to a will technically framed, I cannot help using that knowledge which enables me, at the mere sight of the document, to come to some conclusion as to its meaning; subject to its being altered by further consideration, I inevitably, in spite of myself, come to a conclusion from the knowledge I have of what is meant by the words used; it is language which I understand, I can construe it the moment I see it. To ask me, therefore, not to apply my own mode of thought to this will is to ask me to divest myself of my knowledge of law, and to come to it with a naked mind, and to consider it without those means and advantages of which I ought not to divest myself in coming to a decision.”—*Thellusson v. Rendlesham* (1859), 7 H. L. Cas. 429, at p. 504; 28 L. J. Ch. 948, Lord St. Leonards.

“If technical words are used, by whomsoever they are written, they must be considered as used with their technical meaning, unless the testator in the context shows that he meant to use them in a different sense.”—*Ibid.*, at p. 519, Lord Wensleydale.

“Then there is a subsidiary rule, laid down in *Roddy v. Fitzgerald* [(1858), 6 H. L. Cas. 823], that technical words shall have their legal effect, unless, from the context, it is shown they bear another meaning.”—*Leach v. Jay* (1877), 6 Ch. D. 496, at p. 499; 46 L. J. Ch. 499, at p. 501, Jessel, M. R.

“The rule is to adopt the legal and technical meaning of the word, unless it is controlled by the context, as I stated in *Leach v. Jay* [(1877), 6 Ch. D. 496, at p. 499; 46 L. J. Ch. 499, at p. 501].”—*Smith v. Butcher* (1878), 10 Ch. D. 113, at p. 114; 48 L. J. Ch. 136, Jessel, M. R.

Words Capable of a Two-fold Construction.

Where words are capable of a two-fold construction, such construction should be received as tends to make the will good.

"Where words are capable of a two-fold construction, even in the case of a deed (and much more, of a will), it is just and reasonable that such construction should be received as tends to make it good."—*Atkinson v. Hutchinson* (1734), 3 P. Wms. 258, at p. 260, Lord Talbot, L. C.

"It is a rule that, where words are capable of a two-fold construction, even in the case of a deed, and much more in the case of a will, such a construction shall be received as tends to make it good."—*Thellusson v. Woodford* (1799), 4 Ves. 227, at p. 312, Lawrence, J.

"I apprehend that, if there are two meanings of a word, one of which will effectuate and the other will defeat a testator's object, the Court is bound to select the meaning of the word which will carry out the intention and objects of the testator."—*Whicker v. Hume* (1858), 7 H. L. Cas. 124, at p. 154; 28 L. J. Ch. 396, at p. 399, Lord Chelmsford, L. C.

"If the clause in question is capable of two constructions, one of which would render it void upon a ground which the testator throughout his will seems to have been anxiously guarding against, and the other of which is reconcilable with all his previously expressed intentions, there can be no doubt which of them ought to be adopted."—*Martelli v. Holloway* (1872), L. R. 5 H. L. 532, at p. 548; 42 L. J. Ch. 26, at p. 33, Lord Chelmsford.

Same Words in Different Parts.

The same words in different parts of a will should be given the same meaning.

"Where the same words occur in different parts of the same will, the rule is, that you are to give them the same meaning in the different parts; and if it turns out that they are used in one place where it is impossible that they can be used as words of limitation, this affords ground for concluding, that when the testator uses them again, he is using them in the sense as before."—*Doe d. Wright v. Jesson* (1816), 5 M. & S. 95, at p. 99, Bayley, J.

"It is a well-settled rule of construction, and one to which, from its soundness, I shall always strictly adhere, never to put a different construction on the same word, where it occurs twice or oftener in the same instrument, unless there appear a clear intention to the contrary."—*Ridgeway v. Muntkittrick* (1841), 1 Dr. & War. 84, at p. 93, Sir E. B. Sugden, C.

"It is a canon of construction, that where a testator has affixed a particular meaning to a word in one part of his will, it shall be construed as having the same meaning in all other parts of his will, if it do not violate the sense."—*Rhodes v. Rhodes* (1859), 27 Beav. 413, at p. 417, Sir John Romilly, M. R.

Transposing Words.

"Lord Hardwicke lays down the rule for the construction of wills thus: that the words are often transposed to make sense of a will, otherwise insensible, and to make it take some effect rather than be totally void; but in no case, where the words are plain and sensible, is a transposition made in order to create a different meaning and construction, much less to let in different devisees and legatees."—*Chambers v. Brailsford* (1816), 19 Ves. 652, Lord Eldon, L. C.

Inconsistency.

"If two parts of a will are totally inconsistent, and cannot possibly be reconciled, the proper rule, as I thought upon that occasion [*Sims v. Doughty* (1800), 5 Ves. 243], and still think, is, that the latter shall prevail."—*Constantine v. Constantine* (1801), 6 Ves. 100, at p. 102, Sir W. Grant, M. R.

"The general rule is, that if there be a repugnancy, the first words in a deed, and the last words in a will, shall prevail."—*Doe d. Leicester v. Biggs* (1809), 2 Taunt. 109, at p. 113, Mansfield, C. J.

Rejecting Words.

"Though the Court can construe and expound the words of a testator's will, yet they cannot strike them out of it entirely."—*Southcot v. Watson* (1745), 3 Atk. 226, at p. 233, Lord Hardwicke, L. C.

"The rule is, that words are not to be rejected, unless you cannot by any possibility give them a rational construction."—*Chambers v. Brailsford* (1816), 19 Ves. 652, at p. 654, Lord Eldon, L. C.

"If the general intention of the testator can be collected upon the whole will, particular terms used which are inconsistent with that intention may be rejected, as introduced by mistake or ignorance on the part of the testator, as to the force of the words used."—*Sherratt v. Bentley* (1833), 2 My. & K. 149, at p. 157, Sir John Leach, M. R.

"Where two provisions of a will are totally irreconcilable, so that they cannot possibly stand together, and there is nothing in the context or general scope of the will which leads to a different conclusion, the last shall be considered as indicating a subsequent intention, and prevail; '*cum duo inter se pugnantia reperiuntur in testamento, ultimum ratum est*,' Co. Litt. 112 b. It was argued, indeed, that this last-mentioned doctrine applied only to separate clauses; but it is not so, for it has been adopted where there are inconsistent expressions in the same clause, as in *Doe d. Leicester v. Biggs* [(1809), 2 Taunt. 109]."—*Morrall v. Sutton* (1845), 1 Ph. 533, at p. 537; 14 L. J. Ch. 266, at p. 269, Parke, B.

Discarding, modifying or implying expressions.

"When the main purpose and intention of the testator are ascertained to the satisfaction of the Court, if particular expressions are found in the will which are inconsistent with such intention, though not sufficient to control it, or which indicate an intention which the law will not permit to take effect, such expressions must be discarded or modified; and, on the other hand, if the will shows that the testator must necessarily have intended an interest to be given which there are no words in the will expressly to devise, the Court is to supply the defect by implication, and thus to mould the language of the testator so as to carry into effect, as far as possible, the intention which it is of opinion that the testator has on the whole will sufficiently declared."—*Towns v. Wentworth* (1858), 11 Moore P. C. 526, at p. 543, The Right Hon. T. Pemberton Leigh, delivering the judgment of the Judicial Committee.

Superfluous Words.

"Nothing can be more mischievous than the attempt to wrest words from their proper and legal meaning only because those words are superfluous."—*Giles v. Melsom* (1873), L. R. 6 H. L. 24, at p. 33; 42 L. J. C. P. 122, at p. 125, Lord Selborne, L. C.

Omission supplied.

"I do not depart from the principle of *Mellish v. Mellish* [(1798), 4 Ves. 45], viz., that a mistake cannot be corrected, or an omission supplied, unless it is perfectly clear, by fair inference from the whole will, that there is such mistake or omission."—*Phillipps v. Chamberlaine* (1798), 4 Ves. 51, at p. 57, Sir Richard P. Arden, M. R.

"I think that upon a reasonable construction of the words which the testator has used, the words which are suggested by the statement of claim ought to be read as if they were inserted in the will. If I were to do otherwise I should be going against the canon of construction, that I am to gather the meaning of the testator from the words in which he has expressed his meaning. I am not to be deterred by any accidental omission from putting the true signification on the will, and I am not to substitute what some blundering attorney's clerk or law stationer has written in this will, and treat that blunder as if it was the intention of the testator. I do not hesitate in the slightest degree, therefore, to adopt the rule which Vice-Chancellor Hall expressed in *Sweeting v. Prideaux* [(1876), 2 Ch. D. 413; 45 L. J. Ch. 378], that the testator must necessarily have meant what the mere letter of the will does not express."—*In re Redfern* (1877), 6 Ch. D. 133, at pp. 137, 138; 47 L. J. Ch. 17, at p. 19, Bacon, V.-C.

(See also, *Mellor v. Daintree* (1886), 33 Ch. D. 198; 56 L. J. Ch. 33; *In the goods of Bradley* (1883), 8 P. D. 215; 52 L. J. P. 101; *Dent v. Clayton* (1864), 33 L. J. Ch. 503.)

Caprice.

"I take the law on this subject to have been expressed with much accuracy and felicity by Lord Cranworth, than whom no judge more consistently adhered to sound and strict principles of construction in the interpretation of wills. In the case of *Abbott v. Middleton*, before this House [(1858), 7 H. L. C. 68, at p. 89; 28 L. J. Ch. 110, at p. 112], Lord Cranworth speaks thus: 'Where, by acting on one interpretation of the words used, we are driven to the conclusion that the person using them is acting capriciously, without any intelligible motive, contrary to the ordinary mode in which men in general act in similar cases, then, if the language admits of two constructions, we may reasonably and properly adopt that which avoids these anomalies, even though the construction

adopted is not the most obvious, or the most grammatically accurate. But if the words used are unambiguous, they cannot be departed from merely because they lead to consequences which we consider capricious, or even harsh and unreasonable.”—*Gordon v. Gordon* (1871), L. R. 5 H. L. 254, at p. 284, Lord Cairns.

“The rule upon this subject [upon what principle the Court is to determine which of two ambiguous significations is to be adopted] was happily expressed by Lord Cranworth, in the case of *Abbott v. Middleton* [(1858), 7 H. L. Cas. 68, at p. 89], in this House, in words which have been more than once referred to, ‘Where by acting on one interpretation of the words used, &c.’ [see last quotation].”—*Bathurst v. Errington* (1877), 2 App. Cas. 698, at p. 709; 46 L. J. Ch. 748, at p. 754, Lord Cairns, L. C.

“I take it that no rule of construction is better settled than that, when two meanings are open to a judge, and the one is reasonable and sensible, and the other, though not absolutely unreasonable in the sense of supposing that the testator must have been a lunatic, yet is extremely unlikely, he ought to select that meaning which is consonant to ordinary reason, and not liable to the imputation of excessive caprice.”—*Selby v. Whittaker* (1877), 6 Ch. D. 239, at p. 248; 47 L. J. Ch. 121, at p. 124, Jessel, M. R.

“The rule of Court is this—that if we find language in a will which is capable of being used in what I may call a primary and secondary sense, and if we find that the primary meaning, if applied, gives a construction which would lead to the conclusion that the person using it is acting capriciously, and without intelligible motive, and contrary to the ordinary mode in which men generally act in similar cases, then we may adopt the second; and *a fortiori*, it follows that, if by adhering to the primary sense of the words we come to the conclusion that the testator is acting in the ordinary mode in which men generally act in similar cases and his will is intelligible and devoid of caprice, it is the duty of the Court to adhere to that primary signification.”—*Locke v. Dunlop* (1888), 39 Ch. D. 387, at p. 393; 56 L. J. Ch. 697, at p. 701, Stirling, J.

Misdescription.

“The principle was clearly explained and applied in *Morrell v. Fisher* [(1849), 4 Ex. 591, at p. 604; 19 L. J. Ex. 273, at p. 277], where the Court says: ‘There are two rules, “*falsa demonstratio non nocet*” and “*non accipi debent verba in demonstrationem falsam*”

quæ competunt in limitationem veram.” The first rule means, that, if there be an adequate and sufficient description with convenient certainty of what was meant to pass, a subsequent erroneous addition will not vitiate it. The characteristic of cases within the rule is, that the description, as far as it is false, applies to no subject at all, and so far as it is true, applies to one only. The other rule means, that if it stand doubtful upon the words whether they import a false reference or demonstration, or whether they be words of restraint that limit the generality of the former words, the law will never intend error or falsehood. If, therefore, there is some land wherein all the demonstrations are true, and some wherein part are true and part false, they shall be intended words of true limitation, to pass only those lands wherein the circumstances are true.”—*Webber v. Stanley* (1864), 16 C. B. N. S. 698, at p. 755; 33 L. J. C. P. 217, at p. 221, Erle, C. J., delivering the judgment of the Court (Erle, C. J., Williams, J., Willes, J., and Keating, J.).

“It is unnecessary to enter into an examination of the authorities, for they are consistent, from the time of Lord Bacon to the decision in the case of *Webber v. Stanley* [(1864), 16 C. B. N. S. 698, 752; 33 L. J. C. P. 217], where Erle, C. J., laid down the law with a clearness and authority which cannot be strengthened or added to. The rule which they establish is, that where words can be applied so as to operate on a subject-matter, and limit the other terms employed in its description, or in other words, where there is a subject-matter to which they all apply, it is not possible to reject any of those terms as a *falsa demonstratio*. This is expressed in Lord Bacon’s maxim, ‘*non accipi debent verba in demonstrationem falsam quæ competunt in limitationem veram.*’”—*Smith v. Ridgway* (1866), L. R. 1 Ex. 331, at p. 332; 35 L. J. Ex. 198, at p. 199, Willes, J.

Ambiguities.

Latent or Patent.

“The rule as to the reception of parol evidence to explain a will is perfectly clear. In every case of ambiguity, whether latent or patent, parol evidence is admissible to show the state of the testator’s family or property; but the cases in which parol evidence is admissible to show the person intended to be designated by the testator are those of latent ambiguity mentioned by Sir

J. Wigram, where there are two or more persons, who answer other descriptions in the will, each of whom, standing alone, would be entitled to take.”—*Stringer v. Gardiner* (1859), 27 Beav. 35, at p. 38; 28 L. J. Ch. 758, at p. 759, Sir John Romilly, M. R.

Latent.

“Where there is a latent ambiguity, that is, where it seems certain enough upon the will, but the ambiguity is raised by some extrinsic matter, there parol evidence may be received in order to explain that which is made doubtful by parol.”—*Doe v. Lyford* (1816), 4 M. & S. 550, at p. 557, Le Blanc, J.

“Where, on the other hand, the words of the will in themselves are plain and unambiguous, but they become ambiguous by the circumstance that there are two persons to each of whom the description applies, then parol evidence may be admitted also to remove the ambiguity so created; and that rule is a reasonable one.”—*Clayton v. Lord Nugent* (1844), 13 M. & W. 200, at p. 206; 13 L. J. Ex. 363, at p. 368, Alderson, B.

Patent.

“Now, the rule is clear that if there be a patent ambiguity, that is, one which appears upon the will itself, it must be determined on the will, and parol evidence cannot be admitted to explain it.”—*Doe v. Lyford* (1816), 4 M. & S. 550, at p. 556, Le Blanc, J.

“The evidence here is not to produce a construction against the direct and natural meaning of the words, not to control a provision which was distinct and accurately described; but because there is an ambiguity upon the face of the instrument; because an indefinite expression is used capable of being satisfied in more ways than one: and I look to the state of the property at the time, to the estate and interest the settlor had, and the situation in which she stood with regard to the property she was settling, to see whether that estate, or interest, or situation would assist us in judging what was her meaning by that indefinite expression.”—*Smith v. Doe d. Jersey* (1821), 2 Brod. & Bing. 473, at p. 553, Bayley, J.

“In the case of a patent ambiguity, that is one apparent on the face of the instrument, as a general rule, a reference to matter *dehors* the instrument is forbidden. It must, if possible, be removed by construction and not by averment. But in many cases

this is impracticable; where the terms used are wholly indefinite and equivocal, and carry on the face of them no certain or explicit meaning, and the instrument furnishes no materials by which the ambiguity thus arising can be removed; if in such cases the court were to reject the only mode by which the meaning could be ascertained, viz., the resort to extrinsic circumstances, the instrument must become inoperative and void. As a minor evil, therefore, common sense and the law of England (which are seldom at variance), warrant the departure from the general rule and call in the light of extrinsic evidence. The books are full of instances sanctioned by the highest authorities both in law and equity. When the person or thing is designated on the face of the instrument, by terms imperfect and equivocal, admitting either of no meaning at all by themselves, or of a variety of different meanings referring tacitly or expressly for the ascertainment and completion of the meaning to extrinsic circumstances, it has never been considered an objection to the reception of the evidence of those circumstances, that the ambiguity was patent, manifested on the face of the instrument.

“To show how mistaken the idea is, that extrinsic evidence is never to be received in cases of patent ambiguity, we may refer to a case in the House of Lords unquestionably of that description, when the evidence was admitted. I mean the case of *Doe d. Jersey v. Smith* [(1821), 2 Brod. & Bing. 473, at p. 553].”—*Colpoys v. Colpoys* (1822), Jacob 451, at pp. 463, 464, Sir Thomas Plumer, M.R.

“This, therefore, is a case of a *patent* ambiguity, in which, according to all the authorities on this subject, parol evidence to explain the meaning of the will cannot legally be admitted.”—*Clayton v. Lord Nugent* (1844), 13 M. & W. 200, at p. 206; 13 L. J. Ex. 363, at p. 365, Alderson, B.

SECTION VI.

SUBSEQUENT ACTS.

The Wills Act, 1837 (7 Will. IV. & 1 Vict. c. 26).

Sect. 23. “No conveyance or other act made or done subsequently to the execution of a will of or relating to any real or personal estate therein comprised, except an act by which such will shall be

revoked as aforesaid [sects. 18 and 20] shall prevent the operation of the will with respect to such estate or interest in such real or personal estate as the testator shall have power to dispose of by will at the time of his death."

SECTION VII.

	PAGE
Disinheriting	257
Devises	258
General	258
Want or Failure of Issue	259
Devise to Trustee or Executor	259
Estate Tail	260
Children or Issue Dying in Testator's Lifetime	260
Connection of Independent Devises	260
Residuary Devise	261
Revocation	261
Revival	261

Disinheriting.

"The rule of law is, that an heir-at-law shall not be disinherited by a devise, unless there be express words, or the intent of the devisor be manifest and apparent."—*Roe d. Fulham v. Wickett* (1741), Willes 303, at p. 309, Willes, C. J.

"To defeat the heir, it must appear to be the clear intention of the testatrix, collected from the will, either by express words, or necessary implication, that the devisee should take."—*Doe v. Wilkinson* (1788), 2 T. R. 209, at p. 213, Grose, J.

"And one rule is clear, that the heir-at-law is not to be disinherited unless the devisor's intention to disherit him can be collected from the words of the will."—*Denn d. Moore v. Mellor* (1794), 5 T. R. 559, at pp. 563, 564, Grose, J.

"The rule of law being, that the intent of the testator to disinherit his heir-at-law must be clear and plainly appear in his will, otherwise his heir shall not be disinherited."—*Trent v. Hanning* (1806), 7 East 97, at p. 106, Lawrence, J.

"The rule of law is peremptory, that the heir shall not be disinherited unless by plain and cogent inference arising from the words of the will."—*Doe v. Dring* (1814), 2 M. & S. 448, at p. 454, Lord Ellenborough, C. J.

Devises.

General.

General devise of lands includes copyholds and leaseholds.

Wills Act, 1837 (7 Will. IV. & 1 Vict. c. 26).

Sect. 26. "A devise of the land of the testator, or of the land of the testator in any place, or in the occupation of any person mentioned in his will, or otherwise described in a general manner, and any other general devise which would describe a customary, copyhold, or leasehold estate if the testator had no freehold estate which could be described by it, shall be construed to include the customary, copyhold and leasehold estates of the testator, or his customary, copyhold and leasehold estates, or any of them, to which such description shall extend, as the case may be, as well as freehold estates, unless a contrary intention shall appear by the will."

General devise includes property over which the testator has a general power of appointment.

Wills Act, 1837 (7 Will. IV. & 1 Vict. c. 26).

Sect. 27. "A general devise of the real estate of the testator, or of the real estate of the testator in any place, or in the occupation of any person mentioned in his will, or otherwise described in a general manner, shall be construed to include any real estate, or any real estate to which such description shall extend (as the case may be), which he may have power to appoint in any manner he may think proper, and shall operate as an execution of such power, unless a contrary intention shall appear by the will; and in like manner a bequest of the personal estate of the testator, or any bequest of personal property described in a general manner, shall be construed to include any personal estate, or any personal estate to which such description shall extend (as the case may be), which he may have power to appoint in any manner he may think proper, and shall operate as an execution of such power, unless a contrary intention shall appear by the will."

Devise without words of limitation.

Wills Act, 1837 (7 Will. IV. & 1 Vict. c. 26).

Sect. 28. "Where any real estate shall be devised to any person without any words of limitation, such devise shall be construed to pass the fee simple or other the whole estate or interest which the

testator had power to dispose of by will in such real estate, unless a contrary intention shall appear by the will."

Words importing a Want or Failure of Issue.

Wills Act, 1837 (7 Will. IV. & 1 Vict. c. 26).

Sect. 29. "In any devise or bequest of real or personal estate, the words, 'die without issue,' or 'die without leaving issue,' or 'have no issue,' or any other words which may import either a want or failure of issue of any person in his lifetime or at the time of his death, or an indefinite failure of his issue, shall be construed to mean a want or failure of issue in the lifetime or at the time of the death of such person, and not an indefinite failure of his issue, unless a contrary intention shall appear by the will, by reason of such person having a prior estate tail, or of a preceding gift being, without any implication arising from such words, a limitation of an estate tail to such person or issue or otherwise: Provided, that this Act shall not extend to cases where such words as aforesaid import if no issue described in a preceding gift shall be born, or if there shall be no issue who shall live to attain the age or otherwise answer the description required for obtaining a vested estate by a preceding gift to such issue."

Devise to Trustee or Executor.

Wills Act, 1837 (7 Will. IV. & 1 Vict. c. 26).

Sect. 30. "Where any real estate (other than or not being a presentation to a church) shall be devised to any trustee or executor, such devise shall be construed to pass the fee simple or other the whole estate or interest which the testator had power to dispose of by will in such real estate, unless a definite term of years, absolute or determinable, or an estate of freehold, shall thereby be given to him expressly or by implication."

Wills Act, 1837 (7 Will. IV. & 1 Vict. c. 26).

Sect. 31. "Where any real estate shall be devised to a trustee without any express limitation of the estate to be taken by such trustee, and the beneficial interest in such real estate, or in the surplus rents and profits thereof, shall not be given to any person for life, or such beneficial interest shall be given to any person for life, but the purposes of the trust may continue beyond the life of such person, such devise shall be construed to vest in such trustee the

fee simple or other the whole legal estate which the testator had power to dispose of by will in such real estate, and not an estate determinable when the purposes of the trust shall be satisfied."

Devisee of Estate Tail dying in Testator's Lifetime.

Wills Act, 1837 (7 Will. IV. & 1 Vict. c. 26).

Sect. 32. "Where any person to whom any real estate shall be devised for an estate tail or an estate in *quasi* entail, shall die in the lifetime of the testator leaving issue who would be inheritable under such entail, and any such issue shall be living at the time of the death of the testator, such devise shall not lapse, but shall take effect as if the death of such person had happened immediately after the death of the testator, unless a contrary intention shall appear by the will."

Devise or Bequest to Children or Issue dying in Testator's Lifetime.

Wills Act, 1837 (7 Will. IV. & 1 Vict. c. 26).

Sect. 33. "Where any person, being a child or other issue of the testator, to whom any real or personal estate shall be devised or bequeathed for any estate or interest not determinable at or before the death of such person, shall die in the lifetime of the testator leaving issue, and any such issue of such person shall be living at the time of the death of the testator, such devise or bequest shall not lapse, but shall take effect as if the death of such person had happened immediately after the death of the testator, unless a contrary intention shall appear by the will."

Connection of Independent Devises.

"Now, the general rule on this subject is well stated in Mr. Jarman's work on Wills. 'Several independent devises, not grammatically connected or united by the expression of a common purpose, must be construed separately, and without relation to each other, although it may be conjectured from similarity of relationship or other such circumstances, that the testator had the same intention in regard to both. There must be an apparent design to connect them.' I have referred to the authorities which he cites, and they justify the terms in which the rule is expressed." —*In re Johnston, Cockerell v. Earl of Essex* (1884), 26 Ch. D. 538, at p. 545; 53 L. J. Ch. 645, at pp. 647, 648, Chitty, J.

Residuary Devise includes Lapsed and Void Devises.

Wills Act, 1837 (7 Will. IV. & 1 Vict. c. 26).

Sect. 25. "Unless a contrary intention shall appear by the will, such real estate or interest as shall be comprised or intended to be comprised in any devise in such will contained, which shall fail or be void by reason of the death of the devisee in the lifetime of the testator, or by reason of such devise being contrary to law or otherwise incapable of taking effect, shall be included in the residuary devise (if any) contained in such will."

Revocation.

Wills Act, 1837 (7 Will. IV. & 1 Vict. c. 26).

Sect. 20. "No will or codicil or any part thereof shall be revoked otherwise than as aforesaid [by marriage, sect. 18], or by another will or codicil executed in manner hereinbefore required [sect. 9], or by some writing declaring an intention to revoke the same and executed in the manner in which a will is hereinbefore required to be executed [sect. 9], or by the burning, tearing, or otherwise destroying the same by the testator, or by some person in his presence and by his direction, with the intention of revoking the same."

Revival.

Wills Act, 1837 (7 Will. IV. & 1 Vict. c. 26).

Sect. 22. "No will or codicil or any part thereof which shall be in any manner revoked, shall be revived otherwise than by the re-execution thereof or by a codicil executed in manner hereinbefore required [sect. 9] and showing an intention to revive the same: and when any will or codicil which shall be partly revoked and afterwards wholly revoked shall be revived, such revival shall not extend to so much thereof as shall have been revoked before the revocation of the whole thereof, unless an intention to the contrary shall be shown."

Wills Act, 1837 (7 Will. IV. & 1 Vict. c. 26).

Sect. 34. "Every will re-executed or republished or revived by any codicil shall, for the purposes of this Act, be deemed to have been made at the time at which the same shall be so re-executed, republished, or revived."

SECTION VIII.

CONDITIONS PRECEDENT AND SUBSEQUENT.

"I know of no words that either in a will or deed necessarily make a condition precedent, but the same words will either make a condition precedent or subsequent according to the nature of the thing and the intent of the parties."—*Acherley v. Vernon* (1739), Willes 153, at pp. 156, 157, Willes, C. J.

Conditions precedent and subsequent which are illegal.

"According to English law, if a condition subsequent which is to defeat an estate, is against the policy of the law, the gift is absolute, but if the illegal condition is precedent there is no gift."—*In re Moore* (1888), 39 Ch. D. 116, at p. 129; 57 L. J. Ch. 936, at p. 937, Cotton, L. J.

APPENDIX.

INTERPRETATION ACT, 1889.

[52 & 53 VICT. c. 63.]

ARRANGEMENT OF SECTIONS.

Sections.	<i>Re-enactment of existing Rules.</i>	PAGE
1. Rules as to gender and number		267
2. Application of penal Acts to bodies corporate		267
3. Meanings of certain words in Acts since 1850		267
4. Meaning of "county" in past Acts		268
5. " " "parish"		268
6. " " "county court"		268
7. " " "sheriff clerk," &c. in Scotch Acts		268
8. Sections to be substantive enactments		268
9. Acts to be Public Acts		268
10. Amendment or repeal of Acts in same session		268
11. Effect of repeal in Acts passed since 1850.....		268

New General Rules of Construction.

12. Official definitions in past and future Acts	269
13. Judicial definitions in past and future Acts	270
14. Meaning of "rules of court"	271
15. " " borough	272
16. " " guardians and union	272
17. Definitions relating to elections	273
18. Geographical and Colonial definitions in future Acts.....	273
19. Meaning of "person" in future Acts	274
20. " " "writing" in past and future Acts.....	274
21. " " "statutory declaration" in past and future Acts	274
22. " " "financial year" in future Acts	274
23. Definition of Lands Clauses Acts	274
24. Meaning of "Irish Valuation Acts"	274
25. " " "ordnance map"	274
26. " " service by post	275
27. " " "committed for trial"	275
28. Meanings of "sheriff," "felony," and "misdemeanour," in future Scotch Acts	275

Sections.	PAGE
29. Meaning of "county court" in future Irish Acts	275
30. References to the Crown	276
31. Construction of statutory rules, &c.	276
32. Construction of provisions as to exercise of powers and duties.....	276
33. Provisions as to offences under two or more laws	276
34. Measurement of distances.....	276
35. Citation of Acts	276
36. "Commencement"	277
37. Exercise of statutory powers between passing and commencement of Act.....	277
38. Effect of repeal in future Acts-	277

Supplemental.

39. Definitions of "Act" in this Act	277
40. Saving for past Acts	278
41. Repeal	278
42. Commencement of Act	278
43. Short title	278
SCHEDULE	278

INDEX TO DEFINITIONS.

Definition.	Section.	Sub-section.
Admiralty	12	(4)
Affidavit	3	
Appeal Court (<i>see</i> Court of Appeal).		
Assizes	13	(5)
Bank of England	12	(18)
Bank of Ireland	12	(19)
Board of Trade	12	(8)
Board of Guardians	16	(1), (3)
Borough	15	(4)
British Islands	18	(1)
British Possession	18	(2)
British India	18	(4)
Chancellor (<i>see</i> Lord Chancellor).		
Charity Commissioners.....	12	(14)
Chief Secretary	12	(10)
Colony	18	(3)
Colonial Legislature	18	(7)
Commencement	36	(1)
Commissioners of Woods and Forests	12	(12)
Commissioners of Works	12	(13)
Committed for Trial	27	
Consular Officer	12	(20)
County	4, 7	
County Court	6, 29	
Court of Appeal	13	(2)

Definition.	Section.	Sub-section.
Court of Assize	13	(4)
Court of Summary Jurisdiction	13	(11)
Court of Quarter Sessions	13	(14)
Crown	30	
Declaration, Statutory	21	
Ecclesiastical Commissioners	12	(15)
Education Department	12	(6)
Felony	28	
Financial Year	22	
Governor	18	(6)
Guardians	16	(1), (3)
High Court	13	(3)
India	18	(5)
India, British	18	(4)
Irish Valuation Acts	24	
Land	3	
Lands Clauses Acts	23	
Legislature	18	(7)
Local Government register of electors	17	(3)
Lord Chancellor	12	(1)
Lord Lieutenant	12	(9)
Misdemeanour	28	
Month	3	
Municipal Borough	15	(1), (2)
National Debt Commissioners	12	(17)
Oath	3	
Ordnance Map	25	
Parish	5	
Parliamentary Borough	15	(3)
Parliamentary Election	17	(1)
Parliamentary register of electors	17	(2)
Person	2, 19	
Petty Sessional Court	13	(12)
Petty Sessional Court-house	13	(13)
Poor Law Union	16	(2), (4)
Postmaster-General	12	(11)
Privy Council	12	(5)
Quarter Sessions (<i>see</i> Court of Quarter Sessions).		
Queen Anne's Bounty	12	(16)
Rules of Court	14	
Scotch Education Department	12	(7)
Secretary of State	12	(3)
Sheriff	28	
Sheriff Clerk	7	
Sheriffdom		
Shire		
Sovereign	30	
Statutory Declaration	21	

Definition.	Section.	Sub-section.
Summary Jurisdiction Act, 1848	13	(6)
Summary Jurisdiction Acts	13	(10)
Ditto (England)	13	(7)
Ditto (Scotland)	13	(8)
Ditto (Ireland)	13	(9)
Supreme Court	13	(1)
Swear	3	
Treasury	12	(2)
Union, Poor Law	16	(2), (4)
Valuation (Irish) Acts	24	
Woods and Forests, Commissioners of	12	(12)
Works, Commissioners of	12	(13)
Writing	20	

INTERPRETATION ACT, 1889.

(52 & 53 VICT. c. 63.)

An Act for consolidating Enactments relating to the Construction of Acts of Parliament and for further shortening the Language used in Acts of Parliament. [30th August 1889.]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

Re-enactment of existing Rules.

1.—(1) In this Act and in every Act passed after the year one thousand eight hundred and fifty, whether before or after the commencement of this Act, unless the contrary intention appears,— Rules as to gender and number.

(a) words importing the masculine gender shall include females; and

(b) words in the singular shall include the plural, and words in the plural shall include the singular.

(2) The same rules shall be observed in the construction of every enactment relating to an offence punishable on indictment or on summary conviction, when the enactment is contained in an Act passed in or before the year one thousand eight hundred and fifty.

2.—(1) In the construction of every enactment relating to an offence punishable on indictment or on summary conviction, whether contained in an Act passed before or after the commencement of this Act, the expression "person" shall, unless the contrary intention appears, include a body corporate. Application of penal Acts to bodies corporate.

(2) Where under any Act, whether passed before or after the commencement of this Act, any forfeiture or penalty is payable to a party aggrieved, it shall be payable to a body corporate in every case where that body is the party aggrieved.

3. In every Act passed after the year one thousand eight hundred and fifty, whether before or after the commencement of this Act, the following expressions shall, unless the contrary intention appears, have the meanings hereby respectively assigned to them; namely— Meanings of certain words in Acts since 1850.

The expression "month" shall mean calendar month :

The expression "land" shall include messuages, tenements, and hereditaments, houses, and buildings of any tenure :

The expressions "oath" and "affidavit" shall, in the case of persons for the time being allowed by law to affirm or declare instead of swearing, include affirmation and declaration, and the expression "swear" shall, in the like case, include affirm and declare.

Meaning of "county" in past Acts. 4. In every Act passed after the year one thousand eight hundred and fifty and before the commencement of this Act the expression "county" shall, unless the contrary intention appears, be construed as including a county of a city and a county of a town.

Meaning of "parish." 5. In every Act passed after the year one thousand eight hundred and sixty-six, whether before or after the commencement of this Act, the expression "parish" shall, unless the contrary intention appears, mean, as respects England and Wales, a place for which a separate poor rate is or can be made, or for which a separate overseer is or can be appointed.

Meaning of "county court." 6. In this Act, and in every Act and Order of Council passed or made after the year one thousand eight hundred and forty-six, whether before or after the commencement of this Act, the expression "county court" shall, unless the contrary intention appears, mean as respects England and Wales a court under the County Courts Act, 1888.

51 & 52 Vict. c. 43.

Meaning of "sheriff clerk," &c. in Scotch Acts. 7. In every Act relating to Scotland, whether passed before or after the commencement of this Act, unless the contrary intention appears,—
The expression "sheriff clerk" shall include steward clerk;
The expressions "shire," "sheriffdom," and "county" shall include any stewartry in Scotland.

Sections to be substantive enactments. 8. Every section of an Act shall have effect as a substantive enactment without introductory words.

Acts to be public Acts. 9. Every Act passed after the year one thousand eight hundred and fifty, whether before or after the commencement of this Act, shall be a public Act and shall be judicially noticed as such, unless the contrary is expressly provided by the Act.

Amendment or repeal of Acts in same session. 10. Any Act may be altered, amended, or repealed in the same session of Parliament.

Effect of repeal in Acts passed since 1850. 11.—(1) Where an Act passed after the year one thousand eight hundred and fifty, whether before or after the commencement of this Act, repeals a repealing enactment, it shall not be construed as reviving any enactment previously repealed, unless words are added reviving that enactment.

(2) Where an Act passed after the year one thousand eight hundred and fifty, whether before or after the commencement of this Act, repeals wholly or partially any former enactment and substitutes provisions for the enactment repealed, the repealed enactment shall remain in force until the substituted provisions come into operation.

New General Rules of Construction.

12. In this Act, and in every other Act whether passed before or after the commencement of this Act, the following expressions shall, unless the contrary intention appears, have the meanings hereby respectively assigned to them, namely:—

Official definitions in past and future Acts.

(1) The expression "the Lord Chancellor" shall, except when used with reference to Ireland only, mean the Lord High Chancellor of Great Britain for the time being, and when used with reference to Ireland only, shall mean the Lord Chancellor of Ireland for the time being.

(2) The expression "the Treasury" shall mean the Lord High Treasurer for the time being or the Commissioners for the time being of Her Majesty's Treasury.

(3) The expression "Secretary of State" shall mean one of Her Majesty's Principal Secretaries of State for the time being.

(4) The expression "the Admiralty" shall mean the Lord High Admiral of the United Kingdom for the time being, or the Commissioners for the time being for executing the office of Lord High Admiral of the United Kingdom.

(5) The expression "the Privy Council" shall, except when used with reference to Ireland only, mean the Lords and others for the time being of Her Majesty's Most Honourable Privy Council, and when used with reference to Ireland only, shall mean the Privy Council of Ireland for the time being.

(6) The expression "the Education Department" shall mean the Lords of the Committee for the time being of the Privy Council appointed for education.

(7) The expression "the Scotch Education Department" shall mean the Lords of the Committee for the time being of the Privy Council appointed for education in Scotland.

(8) The expression "the Board of Trade" shall mean the Lords of the Committee for the time being of the Privy Council appointed for the consideration of matters relating to trade and foreign plantations.

(9) The expression "Lord Lieutenant," when used with reference to Ireland, shall mean the Lord Lieutenant of Ireland or other Chief Governors or Governor of Ireland for the time being.

(10) The expression "Chief Secretary," when used with reference to Ireland, shall mean the Chief Secretary to the Lord Lieutenant for the time being.

(11) The expression "Postmaster General" shall mean Her Majesty's Postmaster General for the time being.

(12) The expression "Commissioners of Woods" or "Commissioners of Woods and Forests" shall mean the Commissioners of Her Majesty's Woods, Forests, and Land Revenues for the time being.

(13) The expression "Commissioners of Works" shall mean the Commissioners of Her Majesty's Works and Public Buildings for the time being.

(14) The expression "Charity Commissioners" shall mean the Charity Commissioners for England and Wales for the time being.

(15) The expression "Ecclesiastical Commissioners" shall mean the Ecclesiastical Commissioners for England for the time being.

(16) The expression "Queen Anne's Bounty" shall mean the Governors of the Bounty of Queen Anne for the augmentation of the maintenance of the poor clergy.

(17) The expression "National Debt Commissioners" shall mean the Commissioners for the time being for the Reduction of the National Debt.

(18) The expression "the Bank of England" shall mean, as circumstances require, the Governor and Company of the Bank of England or the bank of the Governor and Company of the Bank of England.

(19) The expression "the Bank of Ireland" shall mean, as circumstances require, the Governor and Company of the Bank of Ireland or the bank of the Governor and Company of the Bank of Ireland.

(20) The expression "consular officer" shall include consul-general, consul, vice-consul, consular agent, and any person for the time authorised to discharge the duties of consul-general, consul, or vice-consul.

Judicial definitions in past and future Acts.

13. In this Act and in every other Act whether passed before or after the commencement of this Act, the following expressions shall, unless the contrary intention appears, have the meanings hereby respectively assigned to them, namely :—

(1) The expression "Supreme Court," when used with reference to England or Ireland, shall mean the Supreme Court of Judicature in England or Ireland, as the case may be, or either branch thereof.

(2) The expression "Court of Appeal," when used with reference to England or Ireland, shall mean Her Majesty's Court of Appeal in England or Ireland, as the case may be.

(3) The expression "High Court," when used with reference to England or Ireland, shall mean Her Majesty's High Court of Justice in England or Ireland, as the case may be.

(4) The expression "court of assize" shall, as respects England, Wales, and Ireland, mean a court of assize, a court of oyer and terminer, and a court of gaol delivery, or any of them, and shall, as respects England and Wales, include the Central Criminal Court.

(5) The expression "assizes," as respects England, Wales, and Ireland, shall mean the courts of assize usually held in every year, and shall include the sessions of the Central Criminal Court, but shall not include any court of assize held by virtue of any special commission, or, as respects Ireland, any court held by virtue of the powers conferred by section sixty-three of the Supreme Court of Judicature Act (Ireland), 1877.

(6) The expression "the Summary Jurisdiction Act, 1848," shall mean the Act of the session of the eleventh and twelfth years of the reign of Her present Majesty, chapter forty-three, intituled "An Act to facilitate the performance of the duties of justices of the peace out of sessions within England and Wales with respect to summary convictions and orders."

(7) The expression "the Summary Jurisdiction (England) Acts" and the expression "the Summary Jurisdiction (English) Acts" shall respectively mean the Summary Jurisdiction Act, 1848, and

40 & 41 Vict.
c. 57.

11 & 12 Vict.
c. 43.

the Summary Jurisdiction Act, 1879, and any Act, past or future, amending those Acts or either of them. 42 & 43 Vict. c. 49.

(8) The expression "the Summary Jurisdiction (Scotland) Acts" shall mean the Summary Jurisdiction (Scotland) Acts, 1864 and 1881, and any Act, past or future, amending those Acts or either of them. 27 & 28 Vict. c. 53. 44 & 45 Vict. c. 33.

(9) The expression "the Summary Jurisdiction (Ireland) Acts" shall mean, as respects the Dublin Metropolitan Police District, the Acts regulating the powers and duties of justices of the peace or of the police of that district, and as respects any other part of Ireland, the Petty Sessions (Ireland) Act, 1851, and any Act, past or future, amending the same. 14 & 15 Vict. c. 93.

(10) The expression "the Summary Jurisdiction Acts" when used in relation to England or Wales shall mean the Summary Jurisdiction (England) Acts, and when used in relation to Scotland the Summary Jurisdiction (Scotland) Acts, and when used in relation to Ireland the Summary Jurisdiction (Ireland) Acts.

(11) The expression "court of summary jurisdiction" shall mean any justice or justices of the peace, or other magistrate, by whatever name called, to whom jurisdiction is given by, or who is authorised to act under, the Summary Jurisdiction Acts, whether in England, Wales, or Ireland, and whether acting under the Summary Jurisdiction Acts or any of them, or under any other Act, or by virtue of his commission, or under the common law.

(12) The expression "petty sessional court" shall, as respects England or Wales, mean a court of summary jurisdiction consisting of two or more justices when sitting in a petty sessional court-house, and shall include the Lord Mayor of the city of London, and any alderman of that city, and any metropolitan or borough police magistrate or other stipendiary magistrate when sitting in a court-house or place at which he is authorised by law to do alone any act authorised to be done by more than one justice of the peace.

(13) The expression "petty sessional court-house" shall, as respects England or Wales, mean a court-house or other place at which justices are accustomed to assemble for holding special or petty sessions, or which is for the time being appointed as a substitute for such a court-house or place, and where the justices are accustomed to assemble for either special or petty sessions at more than one court-house or place in a petty sessional division, shall mean any such court-house or place. The expression shall also include any court-house or place at which the Lord Mayor of the city of London or any alderman of that city, or any metropolitan or borough police magistrate or other stipendiary magistrate is authorised by law to do alone any act authorised to be done by more than one justice of the peace.

(14) The expression "court of quarter sessions" shall mean the justices of any county, riding, parts, division, or liberty of a county, or of any county of a city, or county of a town, in general or quarter sessions assembled, and shall include the court of the recorder of a municipal borough having a separate court of quarter sessions.

14. In every Act passed after the commencement of this Act, unless the contrary intention appears, the expression "rules of court" when used in relation to any court shall mean rules made Meaning of "rules of court."

by the authority having for the time being power to make rules or orders regulating the practice and procedure of such court, and as regards Scotland shall include acts of adjournal and acts of sederunt.

The power of the said authority to make rules of court as above defined shall include a power to make rules of court for the purpose of any Act passed after the commencement of this Act, and directing or authorising anything to be done by rules of court.

Meaning of
borough.

15. In this Act and in every Act passed after the commencement of this Act, the following expressions shall, unless the contrary intention appears, have the meanings hereby respectively assigned to them, namely:—

45 & 46 Vict.
c. 50.

(1) The expression “municipal borough” shall mean, as respects England and Wales, any place for the time being subject to the Municipal Corporations Act, 1882, and any reference to the mayor, aldermen, and burgesses of a borough shall include a reference to the mayor, aldermen, and citizens of a city, and any reference to the powers, duties, liabilities or property of the council of a borough shall be construed as a reference to the powers, duties, liabilities, or property of the mayor, aldermen, and burgesses of the borough acting by the council.

(2) The expression “municipal borough” shall mean, as respects Ireland, any place for the time being subject to the Act of the session of the third and fourth years of the reign of her present Majesty, chapter one hundred and eight, intituled “An Act for the regulation of municipal corporations in Ireland.”

(3) The expression “parliamentary borough” shall mean any borough, burgh, place or combination of places returning a member or members to serve in Parliament, and not being either a county or division of a county, or a university, or a combination of universities.

(4) The expression “borough” when used in relation to local government shall mean a municipal borough as above defined, and when used in relation to parliamentary elections or the registration of parliamentary electors shall mean a parliamentary borough as above defined.

Meaning of
guardians and
union.

16. In this Act and in every Act passed after the commencement of this Act the following expressions shall, unless the contrary intention appears, have the meanings hereby respectively assigned to them, namely:—

4 & 5 Will. 4.
c. 76.

(1) The expression “board of guardians” shall, as respects England and Wales, mean a board of guardians elected under the Poor Law Amendment Act, 1834, and the Acts amending the same, and shall include a board of guardians or other body of persons performing under any local Act the like functions to a board of guardians under the Poor Law Amendment Act, 1834.

(2) The expression “poor law union” shall, as respects England and Wales, mean any parish or union of parishes for which there is a separate board of guardians.

(3) The expression “board of guardians” shall, as respects Ireland, mean a board of guardians elected under the Act of the Session of the first and second years of the reign of her present Majesty, chapter fifty-six, intituled “An Act for the more effectual

relief of the destitute poor in Ireland," and the Acts amending the same, and shall include any body of persons appointed by the Local Government Board for Ireland to carry into execution the provisions of those Acts.

(4) The expression "poor law union" shall, as respects Ireland, mean any townland or place or union, or townlands or places, for which there is a separate board of guardians.

17. In every Act passed after the commencement of this Act the following expressions shall, unless the contrary intention appears, have the meanings hereby respectively assigned to them, namely:—

Definitions relating to elections.

(1) The expression "parliamentary election" shall mean the election of a member or members to serve in Parliament for a county or division of a county, or parliamentary borough or division of a parliamentary borough, or for a university or combination of universities.

(2) The expression "parliamentary register of electors" shall mean a register of persons entitled to vote at any parliamentary election.

(3) The expression "local government register of electors" shall mean as respects an administrative county in England or Wales other than a county borough, the county register, and as respects a county borough or other municipal borough, the Burgess roll.

18. In this Act, and in every Act passed after the commencement of this Act, the following expressions shall, unless the contrary intention appears, have the meanings hereby respectively assigned to them, namely:—

Geographical and colonial definitions in future Acts.

(1) The expression "British Islands" shall mean the United Kingdom, the Channel Islands, and the Isle of Man.

(2) The expression "British possession" shall mean any part of Her Majesty's dominions exclusive of the United Kingdom, and where parts of such dominions are under both a central and a local legislature, all parts under the central legislature shall, for the purposes of this definition, be deemed to be one British possession.

(3) The expression "colony" shall mean any part of Her Majesty's dominions exclusive of the British Islands, and of British India, and where parts of such dominions are under both a central and a local legislature, all parts under the central legislature shall, for the purposes of this definition, be deemed to be one colony.

(4) The expression "British India" shall mean all territories and places within Her Majesty's dominions which are for the time being governed by Her Majesty through the Governor-General of India or through any governor or other officer subordinate to the Governor-General of India.

(5) The expression "India" shall mean British India together with any territories of any native prince or chief under the suzerainty of Her Majesty exercised through the Governor-General of India, or through any governor or other officer subordinate to the Governor-General of India.

(6) The expression "Governor" shall, as respects Canada and India, mean the Governor-General, and include any person who for the time being has the powers of the Governor-General, and as respects any other British possession, shall include the officer for the time being administering the government of that possession.

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(7) The expression "colonial legislature" and the expression "legislature," when used with reference to a British possession, shall respectively mean the authority, other than the Imperial Parliament or Her Majesty the Queen in Council, competent to make laws for a British possession.

Meaning of
"person" in
future Acts.

19. In this Act and in every Act passed after the commencement of this Act the expression "person" shall, unless the contrary intention appears, include any body of persons corporate or unincorporate.

Meaning of
"writing" in
past and
future Acts.

20. In this Act and in every other Act whether passed before or after the commencement of this Act expressions referring to writing shall, unless the contrary intention appears, be construed as including references to printing, lithography, photography, and other modes of representing or reproducing words in a visible form.

Meaning of
"statutory
declaration"
in past and
future Acts.
5 & 6 Will 4,
c. 62.

21. In this Act, and in every other Act whether passed before or after the commencement of this Act, the expression "statutory declaration" shall, unless the contrary intention appears, mean a declaration made by virtue of the Statutory Declarations Act, 1835.

Meaning of
"financial
year" in
future Acts.

22. In this Act and in every Act passed after the commencement of this Act the expression "financial year" shall, unless the contrary intention appears, mean as respects any matters relating to the Consolidated Fund or moneys provided by Parliament, or to the Exchequer, or to Imperial taxes or finance, the twelve months ending the thirty-first day of March.

Definition of
Lands Clauses
Acts.

23. In any Act passed after the commencement of this Act, unless the contrary intention appears,—

The expression "Lands Clauses Acts" shall mean—

8 & 9 Vict.
c. 18.
23 & 24 Vict.
c. 106.
32 & 33 Vict.
c. 18.
46 & 47 Vict.
c. 15.
8 & 9 Vict. c. 19.
23 & 24 Vict.
c. 106.

(a) as respects England and Wales, the Lands Clauses Consolidation Act, 1845, the Lands Clauses Consolidation Acts Amendment Act, 1860, the Lands Clauses Consolidation Act, 1869, and the Lands Clauses (Umpire) Act, 1883, and any Acts for the time being in force amending the same; and

(b) as respects Scotland, the Lands Clauses Consolidation (Scotland) Act, 1845, and the Lands Clauses Consolidation Acts Amendment Act, 1860, and any Acts for the time being in force amending the same; and

8 & 9 Vict. c. 18.
23 & 24 Vict.
c. 97.
14 & 15 Vict.
c. 70.
27 & 28 Vict.
c. 71.
31 & 32 Vict.
c. 70.

(c) as respects Ireland, the Lands Clauses Consolidation Act, 1845, the Lands Clauses Consolidation Acts Amendment Act, 1860, the Railways Act (Ireland), 1851, the Railways Act (Ireland), 1860, the Railways Act (Ireland), 1864, and the Railways Traverse Act, and any Acts for the time being in force amending the same.

Meaning of
Irish Valua-
tion Acts.

24. In any Act passed before or after the commencement of this Act the expression "Irish Valuation Acts" shall mean the Acts relating to the valuation of rateable property in Ireland.

Meaning of
"ordnance
map."

25. In this Act and in every other Act, whether passed before or after the commencement of this Act, the expression "ordnance

map" shall, unless the contrary intention appears, mean a map made under the powers conferred by the Survey (Great Britain) Acts, 1841 to 1870, or by the Survey (Ireland) Acts, 1825 to 1870, and the Acts amending the same respectively.

26. Where an Act passed after the commencement of this Act authorises or requires any document to be served by post, whether the expression "serve," or the expression "give" or "send," or any other expression is used, then, unless the contrary intention appears, the service shall be deemed to be effected by properly addressing, prepaying, and posting a letter containing the document, and unless the contrary is proved to have been effected at the time at which the letter would be delivered in the ordinary course of post.

Meaning of service by post.

27. In every Act passed after the commencement of this Act, the expression "committed for trial" used in relation to any person shall, unless the contrary intention appears, mean, as respects England and Wales, committed to prison with the view of being tried before a judge and jury, whether the person is committed in pursuance of section twenty-two or of section twenty-five of the Indictable Offences Act, 1848, or is committed by a court, judge, coroner, or other authority having power to commit a person to any prison with a view to his trial, and shall include a person who is admitted to bail upon a recognizance to appear and take his trial before a judge and jury.

Meaning of "committed for trial."

11 & 12 Vict. c. 42.

28. In this Act and in every Act passed after the commencement of this Act, unless the contrary intention appears—

The expression "sheriff" shall, as respects Scotland, include a sheriff substitute:

The expression "felony" shall, as respects Scotland, mean a high crime and offence:

The expression "misdemeanour" shall, as respects Scotland, mean an offence.

Meanings of "sheriff," "felony," and "misdemeanour," in future Scotch Acts.

29. In every Act passed after the commencement of this Act, unless the contrary intention appears, the expression "county court" shall, as respects Ireland, mean a civil bill court within the meaning of the County Officers and Courts (Ireland) Act, 1877.

Meaning of "county court" in future Irish Acts.

40 & 41 Vict. c. 56.

30. In this Act, and in every other Act whether passed before or after the commencement of this Act, references to the Sovereign reigning at the time of the passing of the Act or to the Crown shall, unless the contrary intention appears, be construed as references to the Sovereign for the time being, and this Act shall be binding on the Crown.

References to the Crown.

31. Where any Act, whether passed before or after the commencement of this Act, confers power to make, grant, or issue any instrument, that is to say, any Order in Council, order, warrant, scheme, letters patent, rules, regulations, or byelaws, expressions used in the instrument, if it is made after the commencement of this Act, shall, unless the contrary intention appears, have the same respective meanings as in the Act conferring the power.

Construction of statutory rules, &c.

Construction
of provisions
as to exercise
of powers
and duties.

32.—(1) Where an Act passed after the commencement of this Act confers a power or imposes a duty, then, unless the contrary intention appears, the power may be exercised and the duty shall be performed from time to time as occasion requires.

(2) Where an Act passed after the commencement of this Act confers a power or imposes a duty on the holder of an office, as such, then, unless the contrary intention appears, the power may be exercised and the duty shall be performed by the holder for the time being of the office.

(3) Where an Act passed after the commencement of this Act confers a power to make any rules, regulations, or byelaws, the power shall, unless the contrary intention appears, be construed as including a power, exerciseable in the like manner and subject to the like consent and conditions, if any, to rescind, revoke, amend, or vary the rules, regulations, or byelaws.

Provisions as
to offences
under two or
more laws.

33. Where an act or omission constitutes an offence under two or more Acts, or both under an Act and at common law, whether any such Act was passed before or after the commencement of this Act, the offender shall, unless the contrary intention appears, be liable to be prosecuted and punished under either or any of those Acts or at common law, but shall not be liable to be punished twice for the same offence.

Measurement
of distances.

34. In the measurement of any distance for the purposes of any Act passed after the commencement of this Act, that distance shall, unless the contrary intention appears, be measured in a straight line on a horizontal plane.

Citation of
Acts.

35.—(1) In any Act, instrument, or document, an Act may be cited by reference to the short title, if any, of the Act, either with or without a reference to the chapter, or by reference to the regnal year in which the Act was passed, and where there are more statutes or sessions than one in the same regnal year, by reference to the statute or the session, as the case may require, and where there are more chapters than one, by reference to the chapter, and any enactment may be cited by reference to the section or sub-section of the Act in which the enactment is contained.

(2) Where any Act passed after the commencement of this Act contains such reference as aforesaid, the reference shall, unless a contrary intention appears, be read as referring, in the case of statutes included in any revised edition of the statutes purporting to be printed by authority, to that edition, and in the case of statutes not so included, and passed before the reign of King George the First, to the edition prepared under the direction of the Record Commission; and in other cases to the copies of the statutes purporting to be printed by the Queen's Printer, or under the superintendence or authority of Her Majesty's Stationery Office.

(3) In any Act passed after the commencement of this Act a description or citation of a portion of another Act shall, unless the contrary intention appears, be construed as including the word, section, or other part mentioned or referred to as forming the beginning and as forming the end of the portion comprised in the description or citation.

36.—(1) In this Act, and in every Act passed either before or after the commencement of this Act, the expression “commencement,” when used with reference to an Act, shall mean the time at which the Act comes into operation.

(2) Where an Act passed after the commencement of this Act, or any Order in Council, order, warrant, scheme, letters patent, rules, regulations, or byelaws made, granted, or issued, under a power conferred by any such Act, is expressed to come into operation on a particular day, the same shall be construed as coming into operation immediately on the expiration of the previous day.

37. Where an Act passed after the commencement of this Act is not to come into operation immediately on the passing thereof, and confers power to make any appointment, to make, grant, or issue any instrument, that is to say, any Order in Council, order, warrant, scheme, letters patent, rules, regulations, or byelaws, to give notices, to prescribe forms, or to do any other thing for the purposes of the Act, that power may, unless the contrary intention appears, be exercised at any time after the passing of the Act, so far as may be necessary or expedient for the purpose of bringing the Act into operation at the date of the commencement thereof, subject to this restriction, that any instrument made under the power shall not, unless the contrary intention appears in the Act, or the contrary is necessary for bringing the Act into operation, come into operation until the Act comes into operation.

Exercise of statutory powers between passing and commencement of Act.

38.—(1) Where this Act or any Act passed after the commencement of this Act repeals and re-enacts, with or without modification, any provisions of a former Act, references in any other Act to the provisions so repealed, shall, unless the contrary intention appears, be construed as references to the provisions so re-enacted.

Effect of repeal in future Acts.

(2) Where this Act or any Act passed after the commencement of this Act repeals any other enactment, then, unless the contrary intention appears, the repeal shall not—

- (a) revive anything not in force or existing at the time at which the repeal takes effect; or,
- (b) affect the previous operation of any enactment so repealed or anything duly done or suffered under any enactment so repealed; or
- (c) affect any right, privilege, obligation, or liability acquired, accrued, or incurred under any enactment so repealed; or
- (d) affect any penalty, forfeiture, or punishment incurred in respect of any offence committed against any enactment so repealed; or
- (e) affect any investigation, legal proceeding, or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture, or punishment as aforesaid;

and any such investigation, legal proceeding, or remedy may be instituted, continued, or enforced, and any such penalty, forfeiture, or punishment may be imposed, as if the repealing Act had not been passed.

Supplemental.

39. In this Act the expression “Act” shall include a local and personal Act and a private Act.

Definition of “Act” in this Act.

- Saving for past Acts.** 40. The provisions of this Act respecting the construction of Acts passed after the commencement of this Act shall not affect the construction of any Act passed before the commencement of this Act, although it is continued or amended by an Act passed after such commencement.
- Repeal.** 41. The Acts described in the Schedule to this Act are hereby repealed to the extent appearing in the third column of the Schedule.
- Commencement of Act.** 42. This Act shall come into operation on the first day of January one thousand eight hundred and ninety.
- Short title.** 43. This Act may be cited as the Interpretation Act, 1889.

SCHEDULE.

Section 41.

ENACTMENTS REPEALED.

Session and Chapter.	Title or Short Title.	Extent of Repeal.
7 & 8 Geo. 4. c. 28.	An Act for further improving the administration of justice in criminal cases in England.	Section fourteen.
9 Geo. 4. c. 54. -	An Act for improving the administration of justice in criminal cases in Ireland.	Section thirty-five.
7 Will. 4. & 1 Vict. c. 39.	An Act to interpret the word "sheriff," "sheriff clerk," "shire," "sheriffdom," and "county," occurring in Acts of Parliament relating to Scotland.	The whole Act.
13 & 14 Vict. c. 21.	An Act for shortening the language used in Acts of Parliament.	The whole Act.
29 & 30 Vict. c. 113.	The Poor Law Amendment Act of 1866.	Section eighteen, from the beginning to "can be appointed, and."
42 & 43 Vict. c. 49.	The Summary Jurisdiction Act, 1879	In section twenty the sub-sections numbered (3) and (6).
47 & 48 Vict. c. 43.	The Summary Jurisdiction Act, 1884	Section fifty.
51 & 52 Vict. c. 43.	The County Courts Act, 1888 - -	Section seven. Section one hundred and eighty-seven, from the beginning to "is meant, and."

LORD BROUGHAM'S ACT, 1850.

(13 & 14 VICT. c. 21.)

An Act for shortening the Language used in Acts of Parliament.
[10th June 1850.]

Be it declared and enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that every Act to be passed after the commencement of this Act may be altered, amended, or repealed in the same session of Parliament, any law or usage to the contrary notwithstanding. (See section 10 of the Interpretation Act, 1889, ante, p. 268.)

Acts of Parliament may be altered, &c. in the same session.

II. *Be it enacted, That all Acts shall be divided into sections, if there be more enactments than one, which sections shall be deemed to be substantive enactments, without any introductory words. (See section 8 of the Interpretation Act, 1889, ante, p. 268.)*

Acts of Parliament to be divided into sections, without introductory words.

III. *Be it enacted, That in any Act, when any former Act is referred to, it shall be sufficient, if such Act was made before the seventh year of Henry the Seventh, to cite the year of the king's reign in which it was made, and where there are more statutes than one in the same year the statute, and where there are more chapters than one the chapter; and if such Act referred to was made after the fourth year of Henry the Seventh, to cite the year of the reign, and where there are more statutes or sessions than one in the same year the statute or the session (as the case may require), and where there are more chapters or sections than one the chapter or section or chapter and section (as the case may require), without reciting the title of such Act, or the provision of such section, so referred to; and the reference in all cases shall be made according to the copies of statutes printed by the Queen's printer, or to the copies thereof contained in the reports of the Commissioners of Public Records: Provided that where it is only intended to amend or repeal any portion only of such section it shall be necessary still either to recite such portion or to set forth the matter or thing intended to be amended or repealed. (See section 35 of the Interpretation Act, 1889, ante, p. 276.)*

Where any Act is referred to it shall be sufficient to cite the year of the reign, chapter, and section, &c.

IV. *Be it enacted, that in all Acts words importing the masculine gender shall be deemed and taken to include females, and the singular to include the plural, and the plural the singular, unless the contrary as to gender or number is expressly provided; and the word "month" to*

Interpretation of certain words for future Acts.

mean calendar month, unless words be added showing lunar month to be intended; and "county" shall be held to mean also county of a town or of a city, unless such extended meaning is expressly excluded by words; and the word "land" shall include messuages, tenements, and hereditaments, houses and buildings, of any tenure, unless where there are words to exclude houses and buildings, or to restrict the meaning to tenements of some particular tenure; and the words "oath," "swear," and "affidavit" shall include affirmation, declaration, affirming, and declaring, in the case of persons by law allowed to declare or affirm instead of swearing. (See sections 1 to 4 inclusive of the Interpretation Act, 1889, ante, pp. 267, 268.)

Repealed Acts not to be revived in virtue of the repeal of the repealing Act.

V. Be it enacted, that where any Act repealing in whole or in part any former Act is itself repealed, such last repeal shall not revive the Act or provisions before repealed, unless words be added reviving such Act or provisions. (See section 38 of the Interpretation Act, 1889, ante, p. 277.)

Repealed provisions of any Act to remain in force until the substituted provisions come into force.

VI. Be it enacted, that wherever any Act shall be made repealing in whole or in part any former Act, and substituting some provision or provisions instead of the provision or provisions repealed, such provision or provisions so repealed shall remain in force until the substituted provision or provisions shall come into operation by force of the last made Act. (See section 37 of the Interpretation Act, 1889, ante, p. 277.)

Acts to be deemed public Acts.

VII. Be it enacted, that every Act made after the commencement of this Act shall be deemed and taken to be a public Act, and shall be judicially taken notice of as such, unless the contrary be expressly provided and declared by such Act. (See sections 9 and 39 of the Interpretation Act, 1889, ante, pp. 268, 277.)

Commencement of Act.

VIII. Be it declared and enacted, that this Act shall commence and take effect from and immediately after the commencement of the next session of Parliament.

INDEX.

- ABSRD operation, 152.
Accumulative damages, 206.
 penalties, 206.
Act or statute, definition of, 106, 176, 210, 277.
Acts of parties, subsequent, 58, 256.
Additions, erroneous, 90.
"Admiralty," statutory definition of, 269.
"Affidavit," statutory definition of, 268, 280.
Aliens, effect of statutes on, 107.
Alteration of law pending action, 195.
Alterations in deeds, 90.
Ambiguity, latent, in contracts, 60.
 in wills, 255.
 patent, in contracts, 60.
 in wills, 255.
Amending statute, 168.
Amendment of statutes in same session, 210, 268, 279.
American Courts, decisions of, 29.
Ancient authors, 3.
Appeal, statutory definition of Court of, 270.
Argument from inconvenience, deeds, 92.
 statutes, 161, 183, 184.
Artificial rules for construing wills, 225.
"Assizes," statutory definition of, 270.
Authorities, 1—6.
Authors, ancient, 3.
Avoiding statutes, 208.

"BANK of England," statutory definition of, 270.
"Bank of Ireland," statutory definition of, 270.
Barnardiston's reports, 5.
Beneficial construction, 64, 161, 200.
Bill of lading, 94.
Blackstone's reports, 5.
Blanks in a will, 230.
"Board of guardians," statutory definition of, 272.
"Board of Trade," statutory definition of, 269.
"Borough," statutory definition of, 272.

Brackets in deeds, 67.

in statutes, 125.

"British India," statutory definition of, 273.

"British Islands," statutory definition of, 273.

"British possessions," statutory definition of, 273.

Brougham's Act, 1850...279.

Bye-laws, meaning and construction of, 190, 275.

CAPRICE, 252.

Capricious intention, 39.

Case law, 1—29.

authorities, 1.

decisions, 7.

decisions of Courts, 19.

judgments, 6.

reports, 2.

Cases on wills, 232.

Causa omissus, 151, 163.

Cautions, introductory, 30.

Chancellor, decisions of Lord, 21.

Chancellor, statutory definition of the Lord, 269.

Charging statutes, 189, 201.

"Charity Commissioners," statutory definition of, 269.

Charter party, 94.

"Chief secretary," statutory definition of, 269.

Children dying in testator's lifetime, devise to, 260.

Circumstances, 35, 237.

altered, 59.

Citation of statutes, 112, 113, 114, 276, 279.

Clauses, general incorporating, 177.

interpretation, 140.

Lord Shaftesbury's, 180.

Codification statutes, 168.

Coke's reports, 5.

Colonial and geographical definitions in future Acts, 273.

"Colonial legislature," statutory definition of, 274.

Colonies, statutes affecting, 110.

"Colony," statutory definition of, 273.

"Commencement," statutory definition of, 117, 277.

"Commissioners of Woods and Forests," statutory definition of, 269.

"Commissioners of Works," statutory definition of, 269.

Commissioners, report of, 134.

"Committed for trial," statutory definition of, 275.

Common law, to be considered, 129.

effect of statute on, 158.

Computation of time, 40, 41.

Concurrent jurisdiction, decisions of courts of, 19.

- Conditions, precedent and subsequent, in deeds, 84.
 - in wills, 262.
- Conferring powers, statutes, 181.
- Connection of independent devises, 260.
- Consistent decisions, 10.
- Consolidation of statutes, 167.
- Construction of contracts, 42.
 - deeds, 63.
 - mercantile documents, 93.
 - patents, 97.
 - pleadings, 102.
 - powers, 104.
 - statutes, 106.
 - wills, 224.
- Construction, uniformity of, in all parts of the Empire, 25, 112.
- "Consular officer," statutory definition of, 270.
- Contemporanea expositio*, as regards deeds, 92.
 - as regards statutes, 169.
- Context of all instruments, 39.
 - of contracts, 57.
 - of statutes, 145.
 - of wills, 243.
- Continuing statutes, 208.
- Contract defined, 42.
- Contracts—altered circumstances, 59.
 - ambiguities, latent and patent, 60.
 - application of *Lex fori* to, 47.
 - Court and jury, duties of, 55.
 - defined, 42.
 - effect of statutes on, 160.
 - evidence of, 42.
 - foreign documents, 48.
 - foreign stamp law, 50.
 - golden rule (Bramwell, B.), 59.
 - implied promise, 59.
 - intention, from context, from words used, 57.
 - latent ambiguity, 60.
 - laws governing, 44.
 - legal and equitable construction, 51.
 - Lex fori*, application of, 47.
 - original draft, 54.
 - patent ambiguity, 60.
 - rules applicable to *all* contracts, 42.
 - secret intention, 60.
 - subsequent acts of parties, 58.
 - subsequent declarations of parties, 58.
 - time, essence of contract, 53.
 - time, Greenwich mean, 53.

- Contracts—two instruments, 54.
 - where made, place of fulfilment, 44.
- Contradictory decisions, 10.
 - statutes, 196.
- Convenience and inconvenience, 92, 183.
- Co-ordinate jurisdiction, decisions of courts of, 19.
- Corporate bodies, application of penal statutes to, 138, 267.
 - statutes conferring powers on, 181.
- “County,” statutory definition of, 139, 268, 280.
- “County Court,” statutory definition of, 139, 268.
- Court, duty of, 31, 55.
 - Lord Chancellor’s, decisions of, 21.
 - “Court of Appeal,” statutory definition of, 270.
 - “Court of Assize,” statutory definition of, 270.
 - “Court of Quarter Sessions,” statutory definition of, 271.
 - “Court of summary jurisdiction,” statutory definition of, 271.
- Courts, American, decisions of, 29.
 - ecclesiastical, decisions of, 26.
 - equally divided, 19.
 - House of Lords, decisions of, 22.
 - Irish, decisions of, 27.
 - of co-ordinate jurisdiction, decisions of, 21.
 - Scotch, decisions of, 27.
- Covenant defined, 76.
- Covenants by provision or exception or recital, 76.
 - conditions precedent, 84.
 - construction of, against covenantor, 79.
 - defined, 76.
 - dependent, 82.
 - effect of proviso on, 88.
 - express, 78.
 - for another, 88.
 - implied, 78.
 - independent, 82.
 - joint and several, 86.
 - partly affirmative and partly negative, 85.
 - real and personal, 85.
 - restrictive, 85.
- Crown, references to the, in Acts, 275.
- Cumulative statutes, 206.
- Customs, effect of statute on, 159.

- DATE of an instrument, evidence of, 40.
 - of deeds, 66.
 - of statutes, 115.
 - of wills, 231.
- Debate in Parliament, reference to, 134.

Decisions, 7.

- affirmed on different grounds, 18.
- consistent, 10.
- contradictory, 10.
- dicta contained in, 15.
- long-standing, 10.
- on identical words, 17.
- on similar grounds, 17.
- on similar words, 17.
- on statutes, 170.
- on wills, 232.
- principles of, 9.
- reason and spirit of, 7.
- use of, 7.
- when useful, 8.

Decisions of Courts,—American, 29.

- of co-ordinate or concurrent jurisdiction, 19.
- Ecclesiastical, 26.
- House of Lords, 22.
- Irish, 27.
- Lord Chancellor, 21.
- Privy Council, 25.
- Railway Commissioners, 27.
- Scotch, 27.

Declaration, statutory definition of statutory, 274.

Declarations of parties, 58.

Declaratory statutes, 196.

Deeds, alterations in, 90.

- argument of inconvenience, 92.
- brackets in, 67.
- construction of, should be favourable, 64.
 - most agreeable to the intention, 64.
- contemporanea expositio*, 92.
- covenants in, when conditions precedent, 84.
 - construed against covenantor, 79.
 - definition of a covenant, 76.
 - dependent or independent, 82.
 - effect of proviso on, 88.
 - express or implied, 78.
 - for another, 88.
 - joint and several, 86.
 - partly affirmative and partly negative, 85.
 - real and personal, 85.
 - restrictive, 85.
- date and delivery of, 66.
- ejusdem generis* doctrine, 70.
- erroneous additions to, 90.
- exceptions in, 72.
- inconsistent parts of, 67.

- Deeds, intention of, 67.
 - legal and illegal parts of, 89.
 - matters referred to in, 90.
 - operating two ways, 69.
 - operative part and recitals, 73.
 - presumption respecting the making of, 63.
 - punctuation, 67.
 - recitals and operative part, 73.
 - releases, 91.
 - repugnancy in, 88.
 - time, 67.
 - words general and special in, 70.
 - words in, how construed, 69.
- Definition of "commencement," 117, 277.
 - "contract," 42.
 - "covenant," 76.
 - "pleading," 102.
 - "preamble," 118.
 - "statute," 106.
- Definitions, judicial, in past and future Acts, 270.
 - statutory, index to, 264.
- Delivery of deeds, 66.
- Devises, general, 258.
 - independent, connection of, 260.
 - residuary, 261.
- Dicta contained in decisions, modern and old, 15.
- Dictionary meaning of words in statutes, 145.
 - wills, 246.
- Dictionaries, legal, 34.
- Different words in same statute, 148.
- Difficulties of construction, 127.
- Difficulty of applying rules, 127.
- Directory statutes, 153, 156.
- Disinheriting wills, 257.
- Distances, statutory measurement of, 276.
- Domicile, testator's, 225.
- Draft of contract, original, 54.
- Duties and powers, construction of provisions as to the exercise of,
 - 190, 275, 276.
- Duty of judge, 31, 55.
 - jury, 31, 55.
- ECCLÉSIASTICAL Courts, decisions of, 26.
 - "Ecclesiastical Commissioners," statutory definition of, 269.
 - "Education department," statutory definition of, 269.
- Ejusdem generis* doctrine, in all instruments, 32.
 - in deeds, 70.
 - in statutes, 146.
- Elections, definitions relating to, 273.

- Enabling statutes, 153, 154, 181.
 - Enforcing statutes, mode of, 205.
 - Equitable construction of contracts, 51.
 - of statutes, 160.
 - Erroneous additions, 90.
 - Estate tail, devisee of, dying in testator's lifetime, 260.
 - Evidence of contract, 43.
 - of date, 40, 66, 231.
 - Exception, covenant by, 76.
 - or saving clause, 126.
 - Exceptions, how they control deeds, 72.
 - Exercise of powers and duties, 190, 275, 276.
 - of statutory powers between passing and commencement of statute, 118, 277.
 - Expiring statutes, 208.
 - Explanatory statutes, 200.
 - Express covenant, 78.
 - Expressions, technical, 149, 246.
 - Extension of statutes, 157.
 - Extraordinary results, 152.
- FAILURE of issue, words importing, 259.
- Falsa demonstratio non nocet*, 253.
- "Felony," statutory definition of, in Scotch Acts, 275.
- Fictions, statutory, 196.
- "Financial year," statutory definition of, 274.
- Fiscal statutes, 201.
- Foreign documents, 48.
 - domicile, 225.
 - revenue laws, 50.
 - stamp laws, 50.
 - terms in wills, 228.
- Form of wills, 230.
- Forms in schedule to statute, 126.
- GENDER and number, rules as to, 137, 138, 267, 279.
- General and special intents of a will, 241.
 - provisions in statutes, 176.
 - statutes, 214, 219.
- General devises, 258.
- General incorporating clauses, 177.
 - statutes, 214, 219.
- Generalia specialibus non derogant*, 181, 182.
- Generalia verba sunt generaliter intelligenda*, 32, 146.
- General statutory interpretation, 137, 138.
- General words, 32, 70.
 - and expressions in statutes, 146.
- Geographical and Colonial definitions in future Acts, 273.

- Golden rule as to all instruments, 37.
 - as to contracts, 59.
 - as to statutes, 140.
 - as to wills, 236.
- "Governor," statutory definition of, 273.
- Grammatical and ordinary meaning, 37, 140, 236.
- Greenwich mean time, 41, 53, 67, 164.
- Guardians, statutory definition of board of, 272.

- HEADINGS of statutes, 122.
- "High Court," statutory definition of, 270.
- History of statute, 133.
- House of Lords, effect of decisions of, in Scotland, 28.
 - independent reasons of Lords, 22.
 - irreconcilable cases of, 24.

- IDENTICAL words, decisions on, 17.
- Illegal parts of deeds, 89.
- Illiterate testator, 224.
- Imperative phrases, 154.
- Implication, repeal by, 220.
- Implied covenants, 78.
 - words in statutes, 158.
- Inconsistent parts of deeds, 67.
 - of a will, 250.
- Inconsistent statutes, 197.
- Inconvenience, argument of, as regards statutes, 161.
- Incorporating clauses, 177.
 - statutes, 177.
- Incorporation, repeal saved by, 221.
- Independent covenant, 82.
 - devises, connection of, 260.
 - reasons of Lords, 22.
- "India," statutory definition of, 273.
- "India, British," statutory definition of, 273.
- Injury to third parties by statutes, 162.
- Injustice produced by construction, 162.
- Inops consilii* testator, 224.
- In pari materia* statutes, 165.
- Insensible words and phrases, 34.
 - in statutes, 151.
- Instruments, two, 54.
- Intention, capricious, 39.
 - of contracts, 57.
 - of deeds, 67.
 - of statutes, 130, 181.
 - of wills, 233.
 - secret, 60.

- Intents, general and special, of a will, 241.
- inconsistent, of a will, 250.
- Interpretation Act, 1889...263.
- Interpretation clauses, 140.
- In testamentis plenius testatoris intentionem scrutamur*, 234.
- Introductory cautions, 30.
- Irish Courts, decisions of, 27.
- "Irish Valuation Acts," statutory definition of, 274.
- Irreconcilable cases of House of Lords, 24.
- Issue dying in testator's lifetime, devise to, 260.
- words importing a failure of, 259.

- JOINT and several covenants, 86.
- Judge, duty of, 31, 55.
- Judgments, 6.
- Judicial acts, statutes in reference to, 189.
- Judicial definitions in past and future Acts, 270.
- Judicial and other notice of statutes, 175.
- Jurisdiction, decisions of courts of co-ordinate, 19.
- Jury, duty of, 31, 55.

- KEBLE's reports, 5.
- Knowledge of law, testator's, 247.

- "LAND," statutory definition of, 267, 280.
- "Lands Clauses Acts," statutory definition of, 274.
- Latent ambiguity, definition of, 60.
- in contracts, 60.
- in wills, 255.
- "Lawful, it shall be," &c., 154, 155.
- Laws governing contracts, 44.
- Legal and equitable construction, 51.
- Legal and illegal parts of deeds, 89.
- Legal sense in statutes, 150.
- Leges posteriores priores contrarias abrogant*, 220.
- "Legislature," statutory definition of, 274.
- Letter and spirit, 240.
- Letters patent, how construed, 97.
- Lex fori*, application of, 47.
- Lex loci contractus*, 44.
- Literal sense, 38, 143.
- Local and personal statutes, 180.
- "Local government register of electors," statutory definition of, 273.
- Long standing decisions, 10.
- Lord Chancellor's Court, 21.
- "Lord Chancellor," statutory definition of, 269.
- "Lord Lieutenant," statutory definition of, 269.
- Lord Shaftesbury's clauses, 180.

B.

U

Lord Wensleydale's Golden Rule, 37, 140, 236.

Lords, House of, 22.

effect of decisions of, in Scotland, 28.
irreconcilable cases of, 24.

MANDATORY statutes, 200.

Map, 90, 274.

Marginal notes of a statute, 124.

Matters referred to, 90.

Maxims, 30.

"May," 154.

Meaning, derived from will itself, 243.

dictionary, 145, 246.

how collected, 31.

Measurement of distances, statutory, 276.

Mercantile documents, 93.

bill of lading, 94.

charterparty, 94.

policy of insurance, 95.

Ministerial act and judicial discretion, 190.

Miscellaneous instruments—patents, 97.

pleadings, 102.

powers, 104.

specifications, 97.

Mischief to be considered, 129.

"Misdemeanour," statutory definition of, in Scotch Acts, 275.

Misdescription in wills, 253.

Mistakes in statutes, 150.

Mobilia sequuntur personam, 225, 227.

Modern cases, 6.

Modification of express words, 37, 140, 236.

Modifying sections, repeal of, 221.

"Month," statutory definition of, 267, 279.

"Municipal borough," statutory definition of, 272.

NAKED powers, construction of, 104.

"National Debt Commissioners," statutory definition of, 270.

New right and its remedy, 198.

New offence and its remedy, 199.

Noscitur a sociis, 39.

Notice of statutes, judicial, 175.

private, 176.

Nova constitutio futuris imponere debet non præteritis, 191—193.

Nuisance, statutory powers causing a, 184.

"OATH," statutory definition of, 268, 280.

Object and circumstances, 35.

Objects of statutes, 131.

Obligatory statutes, 156.

- Offence, new, and its remedy, 199.
- Offence, same, with different punishments, 207.
- Offences under two or more laws, provisions as to, 207, 276.
- Official definitions in past and future acts, 269.
- Old Reports, 5.
- Omission in wills supplied, 252.
- Operating two ways, deeds, 69.
 - unreasonably or absurdly, statutes, 152.
- Operative part of deeds controlling recitals, 73.
- Optimus legis interpres consuetudo*, 169.
- Optional phrases, 154.
 - statutes, 154.
- "Or," read as "and," 146.
- Order, meaning of, 275.
- Orders in Council, meaning of, 275.
- "Ordinance map," statutory definition of, 274.
- Original draft of a contract, 54.
 - will may be looked at, 230.
- PARI MATERIA*, statutes *in*, 149, 165.
- "Parish," statutory definition of, 268.
- Parliament, reference to debate in, 134.
- "Parliamentary borough," statutory definition of, 272.
- "Parliamentary election," statutory definition of, 273.
- "Parliamentary register of electors," statutory definition of, 273.
- Particular words, 34.
- Parties, subsequent declarations of, 58.
- Patent ambiguity, in contracts, 60.
 - in wills, 255.
- Patents, how construed, 97.
 - specification, 97.
- Penal statutes construed strictly, 203.
 - application of, to bodies corporate, 138, 267.
- Permissive phrases, 154.
 - statutes, 153.
- "Person," statutory definition of, 138, 267, 274.
- Personal covenants, 85.
- Personal statutes, 180.
- "Petty Sessional Court," statutory definition of, 271.
- "Petty Sessional Court-house," statutory definition of, 271.
- Phrase, insensible, in statutes, 151.
- Phrases in statutes *in pari materia*, 149.
 - imperative, 154.
 - particular, 34.
 - permissive, 154.
- Plan, 90.
- Pleading over, 102.
- Pleadings defined, 102.
 - how construed, 102.

- Plowden's reports, 6.
- Plural and singular number, 137, 138, 267, 279.
- Policy of insurance, 95.
 - rules for ascertaining amount of loss, 96.
 - warranty in, 96.
- Policy of a statute, 133.
- "Poor Law Union," statutory definition of, 272, 273.
- Post, statutory meaning of service by, 275.
- "Postmaster-General," statutory definition of, 269.
- Powers, 104.
 - acts conferring, 181.
 - and duties, construction of provisions as to the exercise of, 190, 276.
 - causing a nuisance, 184.
 - construction of statutory rules as to exercise of, 190, 275.
 - convenience and inconvenience of, 183.
 - execution of, 104.
 - exercise of, 118, 277.
 - how construed, 181.
 - imposing charges on individuals, 189.
 - interfering with private property, rights and interests, 186.
 - naked, 104.
 - prohibited, 185.
 - rights accompanying, 184.
 - ultra vires*, 185.
- Practice affecting statutes, 174.
- Preamble and enacting parts of a statute, 118.
 - defined, 118.
- Precedent, conditions, 84, 262.
- Pre-existing rights, effect of statutes on, 159.
- Presumption respecting the making of deeds, 63.
- Principle, rule of law against, 10.
- Principles of decisions, 9.
- Print and writing, charterparties, 95.
 - policies, 95.
 - statutes, 274.
 - wills, 230.
- Prior decisions on statutes, 170.
- Private property, rights and interests, statutes interfering with, 186.
 - statutes, repeal by, 222.
- Privileges, statutes striking at, 188.
- Privy Council decisions, 25.
- "Privy Council," statutory definition of, 269.
- Procedure, retrospective operation of statute dealing with, 195.
- Prohibited powers, 185.
- Prohibitory statutes, 199.

- Promise, implied, 59.
- Prospective statutes, 191.
- Proviso, repugnant to enacting part, 126.
 - to section, 126.
- Public body, statutes conferring powers on, 181.
 - records, 3.
 - sentiment, 169.
 - statutes, statutes to be, 176, 268, 277, 280.
- Punctuation of deeds, 67.
 - of statutes, 125.
 - of wills, 232.
- QUARTER Sessions, statutory definition of Court of, 271.
- "Queen Anne's bounty," statutory definition of, 270.
- RAILWAY Commissioners, decisions of, 27.
- Rational construction of statutes, 161.
 - mode of computing time, 41.
- Real and personal covenants defined, 85.
- Reason and spirit of decisions, 7.
- Reasons, independent, of Lords, 22.
- Recitals, controlling operative part, 73.
 - covenant by, 76.
 - in a deed, 73.
 - in a statute, 122.
- Re-enactment and repeal, 223, 277.
- Regulations, meaning of, 190, 275.
- Rejecting words, 150, 250.
- Releases, 91.
- Remedial statutes, 197.
 - new right and its remedy, 198.
 - new offence and its remedy, 199.
- Remedy to be considered, 129.
- Repeal, and re-enactment, 223, 277.
 - and revival, 211.
 - by private statutes, 222.
 - effect of, of statutes, 210.
 - since 1850 ..211, 268, 280.
 - implied, 220, 221.
 - in same session, 209.
 - of modifying sections, 221.
 - prior general and subsequent special statutes, 219.
 - prior special and subsequent general statutes, 214.
 - saved by incorporation, 221.
- Report of Commissioners, reference to, 134.
- Reporters, 3.
- Reports, 2.
 - "The Times," 2.
 - "Times Law Reports," 2.
 - "Weekly Notes," 3.

- Reports, Old—Barnardiston's, 5.
 - Blackstone's, 5.
 - Coke's, 5.
 - Keble's, 5.
 - Leonard's, 6.
 - Modern, 6.
 - Plowden's, 6.
 - Vernon's, 6.
 - Repugnancy—in deeds, 88.
 - in statutes, 196, 197.
 - in wills, 250.
 - Residuary devise, includes lapsed and void devises, 261.
 - Restrictive covenants, 85.
 - Restriction of statutes, 156.
 - Results, extraordinary, 152.
 - Retrospective statutes, 191.
 - dealing with procedure, 195.
 - Revenue laws, foreign, 50.
 - Revival of statutes, 211, 268, 280.
 - of wills, 261.
 - Revocation of will, 261.
 - Rights—accompanying powers, 184.
 - pre-existing, effect of statute on, 159.
 - private, statutes interfering with, 186.
 - Rule, golden—as to all instruments, 37.
 - as to contracts, 59.
 - as to statutes, 140.
 - as to wills, 236.
 - Rules—applicable to all contracts, 42.
 - instruments, 31.
 - construction of statutory, 190, 275, 276.
 - difficulty of applying, 127.
 - for ascertaining amount of loss on policy, 96.
 - meaning of, 190, 275.
 - of law against principle, 10.
 - stereotyped, 30.
 - "Rules of Court," statutory definition of, 271.
-
- SAME words in different parts of a statute, 148.
 - will, 249.
 - Saving clause of a statute, 126.
 - for past acts, 278.
 - Schedule, of a statute, 126.
 - forms in, 126.
 - title of, 127.
 - Scheme, meaning of, 190, 275.
 - Scotch courts, decisions of, 27.
 - "Scotch education department," statutory definition of, 269.

- Secret intention, 60.
- "Secretary of State," statutory definition of, 269.
- Section, proviso to, 126.
- Sections of a statute, 125.
- to be substantive enactments, 125, 126, 268, 279.
- Semper præsumitur pro negante*, 23.
- Sense, grammatical and ordinary, 37, 140, 236.
- how collected, 31.
- Several covenant, 86.
- statutes to be construed as one, 165.
- "Shall," "shall and may be lawful," 154.
- "Sheriff," statutory definition of, 275.
- "Sheriff clerk," statutory definition of, 139, 268.
- "Sheriffdom," statutory definition of, 268.
- "Shire," statutory definition of, 268.
- Similar grounds, decisions on, 17.
- words, 17.
- Singular and plural, 137, 138, 267, 279.
- Sovereign, references to the, in Acts, 275.
- Special statutes, 214, 219.
- Specification, 97.
- Spirit and letter of will, 240.
- Stamp laws, foreign, 50.
- State of law, regard to the, 169.
- Statute or Act defined, 106, 176, 210, 277.
- Statutes—
- absurd operation of, 152.
 - accumulative penalties, 206.
 - affecting colonies, 110.
 - aliens, binding on, 107.
 - altering law pending action, 195.
 - amending, 168.
 - avoiding, 208.
 - beneficial construction of, 161, 200.
 - brackets in, 125.
 - canons and rules of construction, 106.
 - casus omiseus*, 150, 163.
 - charge on an individual, imposing, 189.
 - charging, fiscal and taxing, 201.
 - citation of, 112, 113, 114, 276, 279.
 - codification, 168.
 - colonial, 110.
 - commencement of, 115.
 - commissioners' reports, reference to, 134.
 - common law, effect on, 158.
 - common law to be considered, 129.
 - conferring powers, 181.

Statutes—*continued*.

- consolidation of, 167.
- construction, beneficial, 161.
 - equitable, 160.
 - rational, 161.
- contemporanea expositio*, 169.
- context, 145.
- continuing, 208.
- contradictory, 196.
- contracts, effect on, 160.
- convenience and inconvenience, 183.
- Crown, affecting the, 135.
- cumulative, 206.
- customs, effect on, 159.
- date of, 115.
- debate on, 134.
- decisions on, 170.
- declaratory, 196.
- defined, 106, 176, 210, 277.
- dictionary meaning of words in, 145.
- different words in same statute, 148.
- difficulties of construing, 127.
- difficulty of applying rules, 127.
- directory, 153, 156.
- effect of repeal, 210—213, 268, 280.
- effect on common law, 158.
 - contracts, 160.
 - customs, 159.
 - pre-existing rights, 159.
- ejusdem generis* doctrine, 146.
- enabling, 153, 154, 181.
- enacting part and preamble, 118.
- enforcing, mode of, 205.
- equitable construction, 160.
- expiring, 208.
- explanatory, 200.
- extension of, 157.
- extraordinary results, 152.
- fictions, statutory, 196.
- fiscal, 201.
- general and special provisions, 176.
 - expressions, 146.
 - statutory interpretation, 137, 267, 268, 279, 280.
 - words, 146.
- golden rule, 140.
- grammatical meaning, 140.
- headings of, 122.

Statutes—*continued*.

- history of, 133.
- how cited, 112—114, 276, 279.
- how construed, 129.
- imperative phrases, 154.
- implied words in, 158.
- imposing charges, 189.
- inconsistent, 197.
- inconvenience, argument from, 161.
- incorporating clauses, 177.
- incorporation, repeal saved by, 221.
- injury to third parties, 162.
- injustice, doctrine of, 162.
- in pari materia*, 165.
- insensible phrase in, 151.
- intention of, 130, 181.
- interpretation clauses, 140.
- judicial acts, in reference to, 189.
- judicial and other notice of, 175.
- language, technical, of, 149.
- legal sense of, 150.
- local and personal, 180.
- Lord Shaftesbury's clauses, 180.
- mandatory, 200.
- marginal notes of, 124.
- mischief, 129.
- mistakes in, 150.
- mode of enforcing, 205.
- modifying, repeal of, 221.
- new offence and its remedy, 199.
- new right and its remedy, 198.
- notice, judicial, 175.
- objects of, 131.
- obligatory, 156.
- operating unreasonably or absurdly, 152.
- optional, 154.
- ordinary sense of, 140.
- penal, how construed, 203.
- permissive phrases in, 154.
- permissive, 153.
- personal and local, 180.
- phrases in statutes *in pari materia*, 149.
- policy of the law, 133.
- powers causing nuisance, 184.
- powers conferred by, 181.
- practice, construction by reference to, 174.
- preamble of, 118.
- pre-existing rights, effect of, on, 159.

Statutes—*continued.*

- primâ facie* territorial, 107.
- prior, decisions on, 170.
- prior general and subsequent special, 219.
- prior special and subsequent general, 214.
- private and public, 178.
- private property, interfering with, 186.
- private, repeal by, 222.
- privileges, striking at, 188.
- procedure, dealing with, 195.
- prohibitory, 199.
- prospective, 191.
- proviso to section, 126.
- public, 178, 268, 280.
- public and private, 178.
- public advantage and convenience, 183.
- punctuation, 125.
- rational and beneficial construction, 161.
- recitals, 122.
- re-enactment, 223.
- remedial, 197.
- remedies, 129, 198, 199.
- repeal and re-enactment, 223.
 - by private statute, 222.
 - effect of, 210.
 - since 1850...211, 268, 280.
 - implied, 220, 221.
 - of modifying sections, 221.
 - prior general and subsequent special, 219.
 - prior special and subsequent general, 214.
 - saved by incorporation, 221.
- reports of commissioners, reference to, 134.
- restriction of, 156.
- retrospective, 191.
- revival of, 211, 268, 280.
- rights accompanying powers, 184.
- rights and interest, interfering with, 186.
- rights, pre-existing, effect on, 159.
- same offence with different punishments, 207.
- same words in different parts of, 148.
- saving clause, 126.
- schedules, 126.
- sections, 125, 126, 268, 279.
- several construed as one, 165.
- special and general provisions, 176.
- state of law to be considered, 169.
- striking at privileges, 188.
- subject-matter, 131.

Statutes—continued.

- substitutionary, 207, 211.
- superfluous words in, 150.
- surrounding circumstances, 132.
- taxing, 201.
- technical language in, 149.
- territorial, 107.
- things to be considered in interpretation of, 129.
- time, 164.
- title of, 114.
- trade, in reference to, 185.
- unreasonable or absurd operation, 152.
- usage, construction with reference to, 169.
- words in, not relating to any art or science, 149.
- "Statutory declaration," statutory definition of, 274, 280.
- Statutory fictions, 196.
 - rules, construction of, 190, 275, 276.
- Stereotyped rules, 30.
- Strict construction, 178, 181, 186, 203.
- Subject-matter of a statute, 131.
- Subsequent acts, 58, 256.
 - conditions, 84, 262.
- Substitutionary statutes, 207, 211.
- "Summary Jurisdiction Act, 1848," statutory definition of, 270.
- "Summary Jurisdiction Acts," statutory definition of, 271.
- "Summary Jurisdiction (England) Acts," statutory definition of, 270.
- "Summary Jurisdiction (Ireland) Acts," statutory definition of, 271.
- "Summary Jurisdiction (Scotland) Acts," statutory definition of, 271.
- Superfluous words in statutes, 150.
 - in wills, 251.
- "Supreme Court," statutory definition of, 270.
- Surrounding circumstances to be considered, 35, 132, 237.
- "Swear," statutory definition of, 268, 280.

TAXING statutes, 201.

- Technical words and expressions in statutes, 149.
 - in wills, 246.

Territorial jurisdiction, 107.

- Testator, illiterate, 224.
 - inops consilii*, 224.

Testator's domicile, 225.

Text-books, as authorities, 1.

Things to be considered in interpreting statutes, 129.

- Time—computation of, 40, 41.
 - essence of contract, 53.
 - Greenwich mean, 41, 53, 67, 164.
- "Times Law Reports," 2.
- "Times," The, 2.
- Title of schedule, 127.
 - statute, 114.
- Trades, statutes in reference to, 185.
- Translation of foreign documents, 48.
- Transposition of words, 250.
- "Treasury," statutory definition of, 269.

- ULTRA vires*, 185.
- Uniformity of construction, 25, 112.
- Union, statutory definition of Poor Law, 272, 273.
- Unreasonable or absurd operation, 152.
- Usage, construction of statute by reference to, 169.
- Ut res magis valeat quam pereat*, 161.

- "VALUATION (Irish) Acts," statutory definition of, 274.
- Verba cartarum fortius accipiuntur contra proferentem*, 81.
- Verba relata inesse videntur*, 90.
- Vernon's Reports, 6.
- Vocabulary of ordinary life, 245.

- WANT or failure of issue, words importing, 259.
- Warranty in a policy, 96.
- "Weekly Notes," 3.
- Wills—ambiguities in, 254.
 - artificial rules for the construction of, 225.
 - blanks in, 230.
 - caprice, testator's, 252.
 - cases on, 232.
 - children or issue dying in testator's lifetime, bequest or devise to, 260.
 - circumstances to be looked at, 237.
 - conditions precedent and subsequent, 262.
 - connection of independent devises, 260.
 - date of, 231.
 - devises, 258.
 - dictionary meaning, 246.
 - discovery of testator's intention, 233.
 - disinheriting, 257.
 - estate tail, devisee of, dying in testator's lifetime, 260.
 - executor, devise to, 259.
 - foreign terms in, 228.

Wills—form of, 230.

- general and special intents, 241.
- golden rule, 236.
- illiterate testator, 224.
- inconsistency in, 250.
- inops consilii* testator, 224.
- intention, testator's, 233.
- latent ambiguity in, 255.
- meaning derived from the will itself, 243.
- misdescription, 253.
- mobilia sequuntur personam*, 225, 227.
- omission supplied, 252.
- original will may be looked at, 230.
- patent ambiguity in, 255.
- print, 230.
- punctuation of, 232.
- rejecting words in, 250.
- residuary devise, 261.
- revival of, 261.
- revocation of, 261.
- same words in different parts of, 249.
- spirit and letter of, 240.
- subsequent Acts, 256.
- superfluous words in, 251.
- technical words and expressions in, 246.
 - form unnecessary, 230.
- testator's domicile, 225.
- transposing words, 250.
- trustee, devise to, 259.
- vocabulary of ordinary life, 243.

Woods and Forests, statutory definition of Commissioners of, 269.

Words capable of a twofold construction, 69, 249.

- dictionary meaning of, 145, 246.
- different, in same statute, 148.
- general and specific, 32, 70, 146.
- identical, 17, 148.
- implied in statutes, 158.
- in deeds, how construed, 69.
- insensible, 34, 151.
- not relating to any art or science, 149.
- omitted, 151, 252.
- particular, 34.
- permissive, 154.
- same in different parts of a statute, 148.
- same in different parts of a will, 249.
- superfluous, 150, 251.

Words, technical, in statutes, 149.
in wills, 246.

transposition of, 250.

Works, statutory definition of Commissioners of, 269.

"Writing," statutory meaning of, 274.

Writing and print, charterparty, 95.

policy, 95.

statutes, 274.

wills, 230.

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